

The several
STATUTES
Concerning
Bankrupts,

Methodically digested.

Together with the re-
solutions of our learned Judges
on them.

As likewise the Statutes
13 th. *Eliz.* and 27 *Eliz.* touching
fraudulent Conveyances; with
the like resolutions
on them.

By **T. B. Esq;**

LONDON,
Printed for *T. Twyford*, MDCLXX.

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Concerning

Bankrupts

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Together with the re-

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on them.

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13th Eliz. and 27 Eliz. concerning
fraudulent Conveyances; with
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By T. B. Eld.

Printed for T. Twiss, MDCCLXX.
LONDON.

THE
RESOLUTIONS
Of the

JUDGES

Upon the several

STATUTES
Of

Bankrupts :

As also

The like Resolutions

upon 13 *Eliz.* and 27 *Eliz.*

Touching

Fraudulent CONVEYANCES.

By T. B. Esq;

LONDON, Printed for T. Twyford, and
are to be sold by Hen. Twyford and other
Booksellers. 1670.

THE
RESOLUTIONS

JADGES

Upon the several

STATUTES



Bankrupts :

The like Resolutions

upon 13th and 27th

London

Printed by J. JOHNSON

By T. B. Ed.

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Gentle Reader

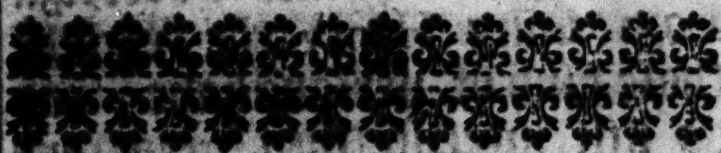
Thou hast here a methodi-
cal digestion of the several
Statutes concerning Bank-
rupts presented to thy view;
together with such Expositions
as have been made of the se-
veral parts of them by the
learned Judges of this King-
dom, since they came forth.

And in regard the matter
hereof may concern most men,
I thought it would not be un-
necessary to be published. For
although there be a Reading in
Print upon some of those Sta-
tutes more full of abstruse No-

tions and Learning than this
is, yet I have some ground to
believe that this will be
thought for ordinary capaci-
ties, and the generality of
men, much more useful. I have
also added herunto the seve-
ral Statutes of 13 El. and
27 El. touching fraudulent
conveyances, with the like Ex-
position of the Learned Judges
on them in several cases an-
nexed, which may be likewise
of use unto thee. Farewell.

T.B.

10 AP 60



What a Bankrupt is, and his Description.

34 Hen. 8. Chap. 4.

THe Lord Chancellor, Treasurer, &c. shall take order with Bankrupts Bodies, Lands, and Goods for the payment of their Debts. Al. 13 El. 7. 1 Jac. 15. 21 Jac. 19.

13 Eliz. Chap. 7.

Who is a Bankrupt, how and by whom his Body, Lands, and Goods shall be ordered for the payment of his Creditors.

ENotwithstanding the Statute made against Bankrupts, in the xxviii year of

the Reign of our late Sovereign
 Lord King Henry the eighth,
 those kind of persons have, and
 do still increase into great and
 excessive numbers, and are like
 more to do, if some better pro-
 vision be not made for the repres-
 sion of them. And for a plain de-
 claration to be made and set
 forth, who is and ought to be ta-
 ken and deemed for a Bankrupt:
 Therefore be it enacted and esta-
 blished by the Authority of this
 present Parliament, That if any
 Merchant or other person, u-
 sing or exercising the trade of
 Merchandize, by way of Bar-
 gaining, Exchange, Rechange,
 Bartry, Chevisance, or other-
 wise, in gross, or by retail, or sell-
 ing his or her trade of living,
 by buying and selling, and being
 Subject born of this Realm, or
 of any the Queens Dominions,
 or Denizen, sithence the fifth day
 of this present Parliament hath

(7)

of any time hereafter shall be
 upon the Receipt, or begin to
 keep any of her Manner, Houses,
 or other lands or tenements, or her
 lands, or take Sanctuary, or take
 refuge, or her self willingly to be
 arrested, for any Debt or other
 thing, not granted by Law for
 any Debtor, or otherwise told, or
 any other just or lawful cause,
 or good consideration or purpose,
 or any other manner, him or her
 self to be outlawed, or give him
 or her any imprisonment, or depart
 from him or her dwelling house
 or houses, to the intent or pur-
 pose to defraud or hinder any of
 his or her Creditors, being also
 a Subject born, and not alien,
 or the just Debt or other of such
 Creditors, or otherwise, shall be
 separated, detained, or taken for
 any manner of imprisonment, or
 otherwise, so good and
 shall be it enacted by the said
 most Excellent, that the Lord
 Chancellor of England, or Lord
 Chief Justice

Keeper of the great Seal of En-
 gland for the time being, upon
 every complaint made to him in
 writing, against any such person
 or persons being Bankrupt, as is
 before defined, shall have full
 power and Authority by Com-
 mission under the great Seal of
 England, to name, assign, and
 appoint such wise and honest dis-
 creet persons, as to him shall
 seem good: Who or the most part
 of them, by vertue of this Act
 and of such Commission, shall
 have full power and authority to
 take by their discretions such or-
 der and direction, with the body
 and bodies of such person where-
 soever he or she may be had, ei-
 ther in his or her House or Hou-
 ses, Sanctuary or elsewhere, as
 well by imprisonment of his or
 her body or bodies, as also with
 all his or her Lands, Tenements,
 Hereditaments, as well Copy or
 Customary hold, as Free hold,

which

which he or she shall have in his
 or her own right, before he or she
 became Bankrupt, and also with
 all such Lands, Tenements and
 Hereditaments, as such person
 shall have purchased, or obtained
 for money, or other recompence
 jointly with his wife, children or
 childre, to the only use of such of-
 fendor, or offendors, or of, or for
 such use, interest, right or title,
 as such offendor or offendors then
 shall have in the same, which he
 or she may lawfully depart with-
 al, or with any person or persons,
 of trust to any secret use of such
 offendor or offendors, and also
 with his or her money, goods,
 cattels, wares, merchandizes and
 debts, wheresoever they may be
 found or known, and cause the
 said Lands, Tenements, Fees,
 Annuities, Offices, Goods, Cat-
 tels, Cellars, Merchandizes and
 Debts, to be searched, viewed,
 entered, and appraised to the best
 value

91101

of:

offenders, debtors or debtors, his
 or their wife or wives, heir and
 heirs, child or children, and
 such person and persons, as by
 such joynt purchase, with the said
 offender or offenders, as is a-
 foresaid, have or shall have any
 estate or interest in the premises,
 and against all other person and
 persons claiming by, from, or
 under such offender or offenders,
 debtor or debtors, by any Act or
 Acts lawfully made, or done after
 any such person shall become
 bankrupt, as is aforesaid, and as
 against the Lord of the Mannors,
 whereof the said Copyhold or
 Customary lands were holden
 their heirs, successors, and
 assigns, and every of them, now
 and hereafter always, and have en-
 acted by the Authority aforesaid,
 that all and every person or per-
 sons, to whom any such sale of
 Copyhold or Customary Lands
 or tenements shall hereafter
 be made,

shall before such time as they or
 any of them shall enter or take
 any profit of the same Lands or
 Tenements, agree and com-
 pound with the Lords of the
 Mannors of whom the same shall
 be holden, for such fines or in-
 comes as heretofore hath been
 most usual and accustomed to be
 yielded or paid theretofore: and
 that upon every such agreement
 or composition, the said Lords
 for the time being, at the next
 Court to be holden at or for the
 said Mannors, shall not only
 grant unto the said Vendee or
 Vendees, upon request, the same
 Copy or Customary Lands or
 Tenements, by Copy of Court
 Roll, of the same Mannors, for
 such estate or interest as to them
 shall be sold, and reserving the
 antient Rents, Customs, and
 Services but also in the same
 Court admit them Beneficiaries of
 the same Copy or Customary
 Lands,

Lands, as other Coppholders of the same Mannors, have been wont to be admitted, and to receive their fealty accordingly.

Provided always, and be it enacted by the Authority aforesaid, That such of the said Commissioners as shall put the said Commission in execution, shall upon lawful request to them made by the said Bankrupt, not only make a true declaration to the same Bankrupts, of the employing and bestowing of their said Lands, Tenements, Offices, fees, goods, cattels, and debts so payed and satisfied to their said Creditors, but also make payment of the overplus of the same (if any such shall be) to the said Bankrupts, their Executors, Administrators, or Assigns.

And be it further enacted by the Authority aforesaid, that if after any such act or offence committed, and complaint thereof made
to

to the said Commissioners to to be appointed, as is aforesaid, of the more part of them, by any party grieved, as is aforesaid, concerning the premises, knowing, suspecting, or suspecting any of the goods, chattels, wares, merchandizes, or debts of such offender or offenders, debtor or debtors, to be in custody, use, or carrying, keeping, or possession of any person or persons, or any person or persons to be indebted to any such offender or offenders, do make relation thereof to the said Commissioners to to be appointed, or the more part of them: that then the said Commissioners, or the more part of them, shall by several writs and of the said Commission, have full power and authority to send for, and call before them by such process, ways or means, as they shall think convenient, all such offenders, all persons, and such

per:

person or persons so known, sus-
 pected, or supposed to have any
 goods, cattle, wares, mer-
 chandises, or debts, in his or
 her custody, use, occupation,
 keeping, or possession, or suppo-
 sed, or suspected to be indebted,
 or a debtor, or offenders, and
 upon their appearance, to exa-
 mine them, and every of them,
 touching their debts and other
 affairs, by such ways and means as
 the said Commissioners, or the
 major part of them, by their dis-
 cretion shall think meet and
 convenient; and upon the spe-
 cialty, necessity, true declara-
 tion, and knowledge of all and
 singular such goods, cattle,
 wares, merchandises, and debts
 truly belonging to offenders,
 or be supposed or suspected to be
 indebted, or to be a debtor, or
 offenders, and all such
 debts as by them or any of them
 shall be supposed or suspected to
 be

be owing to any such offender or offenders.

And if any such person or persons upon such examination, do not disclose and plainly declare, and shew the whole truth of such things as he or they shall be examined of concerning the premises to his knowledge, or do deny to swear : then every such person or persons so denying to swear, or being examined do not declare the plain and whole truth concerning the premises, upon due proof thereof to be made before the said Commissioners, or the more part of them so to be appointed, as is aforesaid, by witness, examination, or otherwise, as to the said Commissioners, or the more part of them shall seem sufficient in that behalf, shall lose and forfeit double the value of all such goods, cattels, wares, merchandizes, and debts, by them or any of them so concealed,

(C⁷)

also, and not wholly and pluri-
plicated and mixed: which
offences shall be levied by the
commissioners, or the more
part of them, of the Lands, Te-
nements, Decretments, goods,
and chattels, of each person so de-
fined to be levied, or not disclosing
the whole truth, as is aforesaid,
by what way and means, and in
what manner and form, as is be-
fore said and appointed for
the principal offender, or offen-
ders, or debtors, and the
said offenders, or offenders to
be levied, or employed to and
for the satisfaction and payments
of the debts of the said creditors,
or debtors, in such like manner,
and in such form, as is above de-
clared, concerning the ordering
of the lands and tenements, or
tenements, goods, and chattels, of
the said offender, or offenders, debtor
or debtors as is aforesaid.

And be it further enacted,
That

That if at any time before or after that any such person or persons departeth the Realm, or shall keep his or their house or houses, or otherwise absent him or themselves, or take sanctuary, or suffer him or themselves to be arrested, outlawed, or yield his or their bodies to prison, as is aforesaid: any person or persons do fraudulently by cabin or collusion, claim, demand, recover, possess, or detain any debts, duties, goods, cattels, lands, or tenements, by writing, trust, or otherwise, which were or shall be due, belonging, or appertaining to any such offender or offenders other than such as he or they can and do prove to be due by right and conscience in form aforesaid, for money payed, wares delivered, or other just consideration or cause reasonable, to the full value thereof, before the said Commissioners so to be appointed, or

the more part of them, as is a-
foresaid, and the same to proceed
(bona fide) without fraud or co-
lusion, that then every such person
expressions is craftily demanding,
claiming, having, possessing, or
receiving any such debt, duty, or
other thing, as is aforesaid, shall
forfeit and lose double as much
as he or they shall so claim, de-
mand, detain, or possess, which
said forfeiture shall be levied, re-
covered, and employed in man-
ner and form as is aforesaid rehear-
sed.

Enacted also, and be it enact-
ed by the authority aforesaid, that if it
shall fortune the creditors of any
such bankrupt, as is aforesaid, to
be charged and paid of their
debts and duties, of, or with the
proper lands, tenements, goods,
chattels, and debts of the said
bankrupts, or of, or with the
same, and some part of the for-
feitures of the said double values

to be forfeited, as is aforesaid, and
 that there shall remain an over-
 plus of the said forfeitures of the
 said double value: that then the
 one moiety of the said overplus
 of the said forfeitures of the dou-
 ble value so remaining, shall be
 by the said Commissioners to ex-
 tending the said Commission,
 within convenient time after the
 levying thereof, paid unto the
 Queens Majesty, her Heirs and
 Successors, and the other moiety
 thereof shall be by the said Com-
 missioners employed and dis-
 bursed to and amongst the poor
 within the Boroughs in every
 City, Town, or County, where
 any such Default shall happen
 to be: And thing in this Act to
 the contrary thereof notwith-
 standing.

And be it further enacted by
 Authority aforesaid, that whosoever
 any person or persons which shall
 shall be involved, or of persons
 with-

where he or themselves out
 of the way of the said man.
 the said man shall be
 the said man, these of made to
 the said man, having
 the said man, the same
 the said man, at the said part
 of the said man, and all
 of the said man, have
 the said man, to ward
 the said man, to be made in
 the said man, upon the said
 the said man, in such place
 the said man, where such Bank
 the said man, commonly dwel-
 the said man, the said man, commu-
 the said man, of them, by the same
 the said man, in the Queens
 the said man, with all conge-
 the said man, and the said man
 the said man, before the said man
 the said man, being authorized
 the said man, of the said man
 the said man, as by the
 the said man, shall be re-
 the said man, and the said man

do not according to such procla-
 mation repair and seek his or
 their body, as is afore said, that
 when the body of any and every
 such person, or persons, shall
 be damaged, taken and carried
 to any prison and purposed but
 the Queen's protection: And that
 into every person and persons
 that shall knowingly and willingly
 help to give or convey, or shall
 willingly and willingly receive,
 detain, or keep secretly any per-
 son or persons so demanded by
 proclamation as is afore said,
 shall suffer such pains by impei-
 sonment or hurt of their bodies,
 or to pay such fine to our Sober-
 reign Lady the Queen's Majesty,
 her heirs and Successors, as to
 the said Lord Chancellor, or Lord
 Keeper of the great Seal (being
 informed thereof) by the Com-
 missioners to be appointed as
 is afore said, or the more part of
 them shall think meet and conve-
 nient

silent for their said offence or
 committed always, and be it
 enacted, that if the Cre-
 ditor of any such offender or of-
 fender, debtor or debtors, which
 inhabit the Realm, keep his
 house or houses, or other-
 wise absent or withdraw him or
 themselves into places unknown,
 or into Sanctuary, or will suffer
 him or themselves to be arrested
 or detained, or yield his or their
 bodies into prison purposely, and
 for the causes aforesaid, be not
 fully satisfied or otherwise con-
 tented for their debts and duties
 by the ways and means before
 specified and declared: that then
 the said Creditor or Creditors,
 any or every of them, shall and may
 have their remedy for the recove-
 ry and ledging of the residue of
 their said debts or duties, where-
 of they shall not be fully satisfied,
 paid, or otherwise contented in

form afore said, against the said
 offender or offenders, in like man-
 ner and form as they should and
 might have had before the ma-
 king of this Act. And that the
 said creditor or creditors, and e-
 very of them, shall be only lawfully
 and excluded by virtue of this
 Act, and for every such part
 and portion of the said debts and
 duties as shall be paid, satisfied,
 distributed, or delivered unto him
 or them by order of the said per-
 sons, as is aforesaid, and of no
 more portion or part thereof.
 Any thing herein contained to the
 contrary notwithstanding. And yet
 Provided always, that no Act
 so enacted by authority aforesaid,
 that if any person or persons,
 which is or shall be published and
 declared to be a Statute by
 virtue of this Act, shall at any
 time after, purchase any lands,
 tenements, hereditaments, free,

which they had when they were
were first declared to be Bank-
rupts, should or might have
been bargained, sold, disposed, or
used by vertue of this Act.

Provided always, that this
Act shall not extend to any lands,
tenements, or hereditaments
free or copy hold, which hereto-
fore have been assured by any such
Bankrupt, or hereafter shall be
assured by any Bankrupt before
he become Bankrupt: so always
that such assurance be made bona
fide, and not to the use of the
Bankrupt himself, his wife, or of
his assigns; and that the parties to
such assurance shall or
shall be made, be made before
the making of such assurance,
and by or consenting to the frau-
dulent purpose of any such Bank-
rupt, to defraud his Creditors.

1 Jac. 15. *an Act to amend the
law touching the Bankrupts
and the Creditors of the said Bankrupts*

[illegible]

cause

be, accepted and adjudged
 Bankrupt to all intents and pur-
 poses, and be further enacted by
 the authority of this present
 Parliament, that the like Com-
 missions, orders, benefits and re-
 medies which are and be prohi-
 bited and limited by the said for-
 mer Act of Parliament (made in
 the first year of the said Reginald) against
 any Bankrupt therein described
 for or concerning him, her or their
 lands, tenements, hereditaments,
 fees, annuities, offices, goods,
 chattels, wares, merchandises
 and debts, or any of them, shall
 be lawfully taken and ex-
 ecuted against such person
 and person that are, be, or ex-
 pect to be Bankrupt, his, her
 and their lands, tenements, he-
 reditaments, fees, annuities, of-
 fices, goods, chattels, wares, mer-
 chandises and debts, in such like
 manner and form as the same
 ought

might or might have been if the
 persons herein described to be
 bankrupts had been described to
 be bankrupts, according to the
 intent of the said former Sta-
 tute, that it shall be lawful for
 any of the creditors of the said
 Bankrupt within iiiij moneths
 after such Commission shall
 be set forth, and until distribu-
 tion shall be made by the said
 Commissioners for the payment
 of the Bankrupts debts, as in such
 order hath been used, to partake,
 and join with the other Credi-
 tors that shall sue forth any such
 commission, for satisfaction and
 payment of his, her or their debts,
 when or the re vinding, without a-
 ny hindrance, let or disturbance
 of any of the said Commission-
 ers, or of any of the other cre-
 ditors of any such Bankrupts,
 the said Creditors so coming in
 to contribute to the charges of
 the

the said Commission; and that
the said Creditors come not
within six moneths, then the
Commissioners to have power
distribute: and also to make

Be it further enacted, that
any person which hereafter is
shall be a Bankrupt, by intent
this Statute, shall convey
procure, or cause to be conveyed
to any of his children, or other
person or persons, any lands, tenements, hereditaments,
offices, fees, annuities, leases,
goods, chattels, or transfer be
debted into other names, ex-
cept the same shall be purchased
conveyed, or transferred, by or
upon mortgage of any of his
heirs, children, or other the parties
intended being of the parties
consent, nor lawful, nor con-
sideration shall be to the power
and authority of the Commission-
ers in this behalf to be appointed
to, or the good part of them, to

and

bar.

bargain, sell, grant, convey, de-
 mise, or otherwise to dispose
 thereof, in as ample manner, as
 if the said Bankrupt had been
 actually seised or possessed there-
 of, or the debts were in his
 own name of the like estate or
 interest to his or their own use, at
 such time as he or she became
 Bankrupt. And that every such
 grant, bargain, sale, conveyance,
 and disposition of the said Com-
 missioners, or of the greater part
 of them, shall be good and avail-
 able to all intents, constructions,
 and purposes in the Law against
 the offender or offenders, his
 heirs, executors, administrators,
 and assigns, and such children and
 persons as shall be subject to this
 Statute, and against all other
 person and persons claiming by,
 from, or under such offender or
 offenders; or such said other per-
 sons, to whom such conveyance
 shall be made by the said Bank-
 rupt,

rupt, or by his means or procure-
ment.

And for that the practises of
Bankrupts of late are so se-
cret and so subtle, as that they
can very hardly be found out, or
brought to light: and for that
the former statute giving power
to the Commissioners to exa-
mine others than the Bank-
rupts, hath not fully or sufficient-
ly authorized them to examine
the said Bankrupt upon oath: For
remedie whereof, Be it further
enacted by the authority of this
present Parliament, That the
said Commissioners may call
before them, or the greater part
of them, the said Bankrupt:
and if upon lawfull warning left
or made in writing at three seve-
ral times at the dwelling place
or house where the said Bank-
rupt, his wife, or family, for the
most part of his abode, did
lodge or remain, within one year
next

next before he, she, or they became Bankrupt, the said Bankrupt shall not appear before the said Commissioners, or the greater part of them, That then and from thenceforth it shall be lawful for the greater number of the said Commissioners, to appoint to proclaim the said party a Bankrupt, at such publike place or places, where the said Commissioners, or the greater part of them shall think meet, warning him, her, or them to appear before them upon the said Commission, at some time appointed. And that if upon five severall Proclamations made in some publike place, the party offending appear not before the said Commissioners, and payd his, her or their bodies to them, or some of them the said Commissioners, or the greater part of them, shall or may award a Warrant to such person or persons, as they think

think meet, to apprehend the body and bodies of the said offender, and offenders, and to bring him, her, or them so offending, before the said Commissioners, wheresoever the said party or parties offending may be found, in place privileged or not, to be examined by the said Commissioners, or the greater part of them.

And that it shall be lawful for the said Commissioners, or the greater part of them, to examine the said offender or offenders, upon such Interrogatories, touching the Lands, tenements, goods, chattels, debts, bills, bonds, books of account, and such other things, as may tend to disclose his, her, or their estate, or the secret grants, conveyances and elopning of his, or their lands, tenements, goods, money and debts, as they shall think meet.

And

And that if therein the offender, or offenders shall refuse to be examined, or to answer fully to every Interrogatory to him to be ministred by the said Commissioners, or the greater part of them, it shall be lawful for the said Commissioners, or the greater part of them, to commit the said offender or offenders to some strait or close imprisonment, there to remain until he, she, or they shall better conform him or herself.

And that if upon his, her or their examination it shall appear, that he, she, or they have committed any wilful or corrupt perjury, tending to the hurt or damage of the creditors of the said Bankrupt, to the value of ten pounds of lawful money of England, or above, the party so offending, shall or may thereof be indicted in any of the Kings High Courts of Record, and being

being lawfully condicted there
shall stand upon the Pillory
some publske place by the space
of two hours, and have one
his ears nailed to the pillory, and
cut off.

And whereas by the forme
Statute made in the said thirteenth
year of the reign of the
late Queen Elizabeth, the Com
missioners for Bankrupts have
power given to them to send for
such person or persons as the
creditors shall know, suppose, or
suspect to have, detain, or keep
any part of the money, goods,
chattels, or debts of the said de
fendor or offenders, or to be in
debted to the said offendor or of
fenders, to be examined by the
said Commissioners, as by the
same Statute appeareth, but
have not good means or remedies
by imprisonment or other penali
ty, to procure the person so sent
for by them to appear before
them.

them, nor having appeared be-
 fore them, to make answer upon
 his oath to such Interrogatories
 as shall be ministred unto him by
 the said Commissioners, for and
 upon the specialty, certainty,
 true declaration and knowledge
 of such lands, tenements, here-
 ditaments, goods, debts, or other
 things of any such offender or of-
 fenders, as he, or shall be, or which
 shall be suspected to be in his custo-
 dy, use or possession, or in the custo-
 dy, use, or possession of any other
 in his knowledge, and of all debts
 owing to, or for the benefit of
 such offender or offenders, by
 himself or by any other to his
 knowledge, so as many times a
 great part of the offender or of-
 fenders lands, tenements, here-
 ditaments, goods, chattels, or
 debts, which by the true intent
 of the said Statute should be im-
 ployed to the satisfaction of the
 creditors of the offender or of-

senders, are concealed or detain-
 ed in the hands of such person
 and persons as refuse to come
 or being come refuse to be sworn
 before the said Commissioners
 to be examined in that behalf, to
 the great encouragement of all
 Bankrupts and their wicked
 confederates and accessaries, and
 to the great hinderance of the
 just remedies of the creditors of
 the said Bankrupts for their
 true and just debts to them ow-
 ing: For remedy whereof, be it
 further enacted by the authority
 aforesaid, That if any person or
 persons being known, supposed,
 or suspected to have or detain any
 part of the lands, tenements,
 or hereditaments, goods, chat-
 tels or debts of the said Bank-
 rupt, or to be indebted to, or for
 the benefit of the said Bankrupt,
 shall after lawful warning to the
 said person or persons given do
 come before the said Commis-
 sioners,

ness, or the greater part of them, to be examined according to the intent of the said Statute, refuse to come, or shall not come before the said Commissioners at the time appointed, having no lawful impediment (such as shall be admitted and allowed of by the said Commissioners or the more part of them, and which shall be then signified or made known to the said Commissioners, at the time of their assembly :) Or that any such person or persons having knowledge or warning of any other assembly or meeting of the said Commissioners again, shall not come and appear before them at such time as he or she lawfully may come, having no such lawful impediment as shall be then made known to the said Commissioners, and by them admitted and allowed of as aforesaid, Or being come before them shall refuse to be

he sworn and to make answer to
 such Interrogatories as shall be
 ministred unto him or them, ac-
 cording to the true intent and
 meaning of the said Statute
 made in the said thirteenth year
 of the reign of our said late So-
 vereign Lady Queen Elizabeth, of
 this present Act, That then
 it shall be lawful for the said
 Commissioners, or for the great-
 er part of them, to commit to
 such Ward and Prison as to
 them or to the greater part of
 them shall be thought meet, all
 such person and persons as shall
 so refuse to be sworn and make
 answer to such Interrogatories
 as shall be so ministred as afore-
 said, and also to direct their War-
 rants to such person or persons
 as to them or the greater part
 of them shall be thought meet,
 to apprehend and arrest such per-
 son or persons as shall refuse to
 appear before them as aforesaid,
 and

and to bring him, her, or them
before the said Commissioners,
or the greater part of them to
be examined as above-said, and
upon his, her, or their refusal to
come or to be examined before
the said Commissioners as a-
foresaid, to commit the said par-
ty so refusing, to such prisons as
the said Commissioners or the
greater part of them shall think
meet, there to remain without
bail or mainprize, until such time
as the said person so refusing to
come, or to be sworn to answer
before the said Commissioners,
shall submit him or her self to
the said Commissioners, and be
by them examined according to
the true intent of the said
Statute, and of this present
Act.

Provided always, that such
Witnesses as shall so be sent
for, shall have such costs and
charges as the Commissioners
in

in their discretion shall think fit:
 The same charges to be ratably
 born by the Creditors of the said
 Bankrupt, according to the pro-
 portion of each of their several
 debts. And if any person or
 persons, other than the Bank-
 rupt, either by subornation, un-
 lawful procurement, sinister per-
 suasion, or means of any others,
 or by his own act, consent, or a-
 greement, shall wilfully and cor-
 ruptly commit any manner of
 wilful perjury by his deposition
 to be taken before the said Com-
 missioners, or the greater part of
 them, as aforesaid, That then
 the party or parties so offending,
 and all and every person and
 persons, that shall unlawfully
 and corruptly procure a-
 ny such unlawful, wilful, and
 corrupt perjury, shall, or may
 therefore be indicted in any of
 the Kings Majesties Courts of
 Record, and after his or their
 con-

inhibition thereof, shall incur
such forfeiture, and receive and
suffer such pains and punishment
as are limited by the Statute
made concerning Perjury, in the
fifth year of the Reign of our
late Sovereign Lady
Queen Elizabeth.

And be it further enacted,
That all and every sum and
sums of money, which shall be
forfeited by force of this present
Act, shall be sued for, and recove-
red by the said creditors only, or
any of them that will sue for the
same, by Action of Debt, Bill,
Plaint, or Information, in any of
the Kings Majesties Courts of
Record, and the sum or sums of
money so recovered, the charges
of suit being deducted, shall be
distributed and divided towards
the payment of the said creditors
of the Bankrupt.

And for that the power & autho-
rity given to the Commissioners
of

of Bankrupts, touching the debts due to the said Bankrupt is not so full and perfect, as that the full benefit thereof in due course, might be imployed to the use of the said Creditors, as was intended: For remedie thereof Be it further enacted by the Authority aforesaid, That the Commissioners of Bankrupts, or the greater part of them shall have power to grant and assign, or otherwise to order or dispose, all or any of the debts due, to and for the benefit of the said Bankrupt, by what person or persons soever, or in what manner and form soever, to the use of the creditors of the said Bankrupt, according to the true intent of the said former recited Statute of Bankrupts: And that the same Grant, Assignment, or disposition of the said debts, in form aforesaid to be made by the said Commissioners, or the greater part

part of them, shall so vest the
 property, right and interest of
 the said debt, and debts, in the
 person or persons of him, her, or
 them, to whom it shall be grant-
 ed, assigned, or ordered by the
 said Commissioners, or the great-
 est part of them, as fully to all
 intents and purposes, as if the
 said Bill, Bond, Bonds, Sta-
 tutes, Recognizances, Judg-
 ment, or Contract, whereupon
 the said Debt or Debts, Deed
 or Deeds shall arise or grow, had
 been made, to or with, or for the
 said person or persons, to whom
 the same shall be so granted, as-
 signed, or disposed, by the said
 Commissioners, and that after
 such Grant, Assignment, or Dis-
 position made of the said Debts,
 that neither the Bankrupt, nor
 any other to whom any such
 Debt shall be due, shall have
 power to recover the same, nor
 to make any release, or dis-
 charge

charge thereof, neither shall the same be attached, as the Debt of the Bankrupt, or such said other person or persons, to whom the same shall be due, by any other person or persons, according to the Custom of the City of London, or otherwise. But that the party or parties to whom the same Debt shall be assigned, shall have like remedy to recover the same, as fully and lawfully in the name or names of the person or persons to whom the same shall be so granted, assigned or ordered by the said Commissioners, in all respects and purposes, as the party himself might have had, any Law, Statute, Use, or Custom to the contrary thereof in anywise notwithstanding.

Provided always, that no Debtor of the Bankrupt be hereby endangered, for the payment of his other debt, truly and bona fide,

to any such Bankrupt, be-
 fore any time as he shall under-
 stand or know that he is become a
 Bankrupt.

And also, and be it fur-
 ther enacted, That such of the
 Commissioners as shall put
 the said Commission in Executi-
 on shall upon lawful request to
 be made by the said Bank-
 rupt not only make a true decla-
 ration to the said Bankrupts, of
 the employing and bestowing of
 the said lands, tene-
 ments, and hereditaments, offi-
 ces, goods, wares, money,
 debts, and debts, which shall be
 paid and satisfied to their said
 Creditors, as is in like case li-
 censed and appointed, by the said
 Statute, made in the said
 thirteenth year of the said late
 Queen Maryes reign, but al-
 so the payment of the overplus
 of the same, if any such shall be,
 to the said Bankrupts, their exe-
 cutors,

cutors, administrators, and assigns, and that the said Bankrupts, after the full satisfaction of the said creditors, shall have full power and authority to recover and receive the residue and remainder of the debts to them owing, Any thing in this Act contained to the contrary in any wise notwithstanding.

Be it further enacted, That if any Action of Trespass, or other suit, shall happen hereafter to be brought against any Commissioner authorized by the Statute made in decimo tertio of our late Sovereign Lady Queen Elizabeth, for Bankrupts, or any other person or persons having authority by virtue or under the Commission, authorizing the said Commissioner for the doing or executing of any matter, by force of the said Statute, or this present Statute, That the defendant or defendants, in any such action

action or suit, may plead Not
 guilty, or otherwise justify that
 Act or thing whereof the plain-
 tiff or plaintiffs complained, was
 done by Authority of the said
 Statute made in the thirteenth of
 Edward, or in this present Act
 respectively, without expressing
 any special of any other matter
 or circumstance contained in ei-
 ther of the said Acts, and with-
 out obliging him or them to shew
 forth their Commission authori-
 zing the said Act, or thing, where-
 upon the Plaintiff shall be admit-
 ted to reply, that the Defendant
 in the said Statute supposed in the De-
 claration of his own wrong, with-
 out any fact cause alleged by
 the said Defendant, whereupon
 the issue in such action, shall be
 joined to be tried by verdict of
 twelve men, and upon trial of
 the issue, the whole matter to be
 given on both parties in evidence,
 according to the very truth of the
 same,

same, And if verdict upon such issue shall pass for the defendant, the defendant to have his costs.

Provided always, and he is further enacted, That after any Commission of Bankrupts hereafter made forth, and dealt in by the Commissioners, if the offender happen to die, before the Commissioners shall distribute the Goods, Lands, and Debts of the offenders, or any of them, by force of the foresaid Statute, at the thirtieth year of the Reign of our late Sovereign Lady Queen Elizabeth, and this Statute, or either of them, That then nevertheless, the said Commissioners may and may in that case proceed in execution, in, and upon the said Commission, for, and concerning the offenders Goods, Lands, Chattiments, Personalities, and Debts, in such sort as they might have done, if the party

Offendor were living, Stat.

1 Jac. 19.

1 Jac. Chap. 19.

Further description of a Bank-

The Statutes of 13 Eliz. 7.

and 1 Jac. 15, enlarged.

As much as dayly experi-

ence sheweth, that the num-

ber and multitude of Bankrupts

do increase more and more, and

all the frauds and deceits inven-

ted and practised for the avoiding

and deluding, the penalties of

the good Laws in that behalf al-

ready made, and the remedy by

them provided: And for that di-

vers defects are dayly found in

the former Statutes made a-

gainst Bankrupts, both in the de-

claration of a Bankrupt, as also

in the power given to the Com-

missioners for the discovery and

contributing the Bankrupts e-

state,

D 3

state, to the great encourage-
 ment of evil minded persons, the
 hinderance of traffique and com-
 merce, the great decay, over-
 throw, and undoing of many Cle-
 rgyers, by whom many thousands
 of the natural born Subjects of
 this Realm, be from time to time
 in all parts of this Kingdom set
 on work : all which do tend to
 the general hurt of this Realm.
 For remedy whereof, be it enact-
 ed by the Kings most excellent
 Majesty, the Lords Spiritual
 and Temporal, and Commons
 in this present Parliament as-
 sembled, and by the Authority of
 the same, That all and singular
 the aforesaid Statutes and Laws
 heretofore made against Bank-
 rupts, and for relief of Credi-
 tors, shall be in all things large-
 ly and beneficially construed and
 expounded for the ayd, help,
 and relief of the Creditors of
 such person or persons as already
 be

he, or hereafter shall become
Bankrupt.

And that all and every person
or persons using or that shall use
the trade of Merchandise, by way
of bargaining, exchange, barter-
ing, chesilance, or otherwise in
wholesale, or by retail, or seeking his,
or her living, by buying and sell-
ing, or that shall use the trade or
profession of a Scribener, receiv-
ing other mens moneys or e-
states into his trust or custody,
who at any time after the end of
next Session of Parliament,
shall either by himself, or others
to his procurement, obtain any
protection or protections, other
than such person or persons as
shall be lawfully protected by the
privilege of Parliament, or shall
prefer or exhibit unto his Maje-
sty, his heirs or Successors, or
unto any of the Kings Courts,
any Petition or Petitions, Bill
or Bills against his or her Credi-
tor

for or Creditors, or any of them
 thereby desiring or endeavouring
 to compel or enforce them, or any
 of them, to accept less than their
 just and principal debts, or to pro-
 cure time, or longer days of pay-
 ment, than was given at the time
 of their original contracts, or be-
 ing indebted to any person or per-
 sons in the sum of one hundred
 pounds or more, shall not pay, or
 otherwise compound for the same,
 within six moneths next after the
 same shall grow due, and the
 Debtor be arrested for the same,
 or within six moneths after an ori-
 ginal Writ sued out to recover
 the said debt, and notice thereof
 given unto him, or left in writing,
 at his, or their dwelling house,
 or last place of abode, or being ar-
 rested for debt, shall after his or
 her arrest, lie in prison two
 moneths or more, upon that, or
 any other arrest or detention in
 prison for debt, or being arrested
 for

the sum of one hundred pounds
or more, of just debt or debts,
shall at any time after such ar-
rest, escape out of prison, or pro-
cure his enlargement, by putting
in common or hired Bafil, shall
be accounted and adjudged a
Bankrupt to all intents and pur-
poses: And in the said cases of
arrest, or lying in prison for such
debt or debts, or getting forth by
common or hired Bafil, from the
time of his or her said first ar-
rest.

And it further enacted by the
authority of this present Parlia-
ment, that the like Commis-
sions, Orders, Benefits, and
Remedies, which are and be pro-
vided and limited by the said for-
mer Acts of Parliaments, made
in the thirteenth yeer of the late
Queen Elizabeth, and in the first
year of the Reign of our Sobe-
reign Lord the Kings Majesty,
against any Bankrupts in them,

or either of them described, or
 for, or concerning his, her, or their
 Lands, Tenements, Heredita-
 ments, Fees, Annuities, Offi-
 ces, Goods, Chattels, Wares,
 Merchandize and Debts, or a-
 ny of them, shall and may be be-
 pursued, taken, and expounded
 against such person and persons
 as are herein, and hereby decla-
 red, described, or expressed to be
 Bankrupts, and against his, her,
 and their Lands, Tenements,
 Hereditaments, Fees, Annui-
 ties, Offices, Goods, Chattels,
 Wares, Merchandizes and
 Debts, in such manner and form
 as the same ought, and might
 have been, if the persons herein
 declared, described, or expressed
 to be Bankrupts, had been by the
 said Statutes, or either of them
 described to be Bankrupts, to all
 intents and purposes whatsoever.

And be it enacted by the autho-
 rity,

the aforesaid, That the same or-
 ders, benefits and remedies,
 which are, and be provided
 and limited by this present Act,
 against any Bankrupts, in, or
 by this Act declared, described, or
 expressed to be Bankrupts, or for,
 or concerning his, her, or their
 Lands, Tenements, Heredita-
 ments, Fees, Annuities, Offices,
 Goods, Chattels, Wares, Mer-
 chandizes and Debts, or any of
 them, or the discovery of them,
 or any of them, shall from hence-
 forth be had, pursued, taken and
 expounded against such person
 and persons, as are declared or
 expressed to be Bankrupts, by
 the said former Acts of Parlia-
 ments, or either of them, and a-
 gainst his, her, and their Lands,
 Tenements, Hereditaments,
 Fees, Annuities, Offices, Goods,
 Chattels, Wares, Merchandi-
 zes and Debts, in such manner
 and form, as the same ought and
 might

might have been, if the persons in the said former Statutes, or either of them described to be Bankrupts, had been mentioned and described to be Bankrupts, in, and by this present Act.

And whereas by the former Laws, the Commissioners appointed, have power to examine the Bankrupt himself, and such person or persons, as are suspected to have, or detain of the estate, goods or chattels of the Bankrupts, but some doubt hath been made whether the Commissioners have power to examine the wives of the Bankrupts touching the same, by reason whereof the Bankrupts wives do daily conceal, and convey away, and cause to be conveyed away much part of their husbands money, wares, goods, merchandize and other estate, to person or persons unknown to any, but such wives by reason whereof much of the Bank-

Bankrupt's estate is concealed,
 and detained from the Credi-
 tors, and avoiding the incum-
 brances thereof, Be it declared
 and enacted by the authority a-
 foresaid, That after such time,
 any person shall by the said
 Commissioners, executing the
 said Commission, or the greater
 part of them, be lawfully ad-
 judged or declared to be a Bank-
 rupt, the said Commissioners
 executing such Commission, shall
 have power and authority to ex-
 amine upon oath, the wife and
 children of all, and every such
 Bankrupt, for the finding out,
 and discovery of the estate, and
 effects, goods, & chattels of such
 Bankrupt, or Bankrupts, con-
 cealed, kept or disposed of, by
 his wife or wives, in their
 own person or persons, or by
 their own act or means, or by any
 any

any other person or persons. And that she and they, the said wife and wives, shall incur such danger and penalty for not coming before the said Commissioners, or for refusing to be sworn and examined, or for not disclosing the truth upon her or their examination, or examinations, as in, and by the said former Laws, or either of them is already made, and provided against any other person, or persons in like cases.

And be it further enacted by the authority aforesaid, That if any Bankrupt shall upon his, or her examination, or examinations to be taken before the said Commissioners, executing the said Commission, be found fraudulently, or deceitfully to have conveyed away his, or her Goods, Chattels, Lands, Tenements, Offices, Fees, Rents or Annuities, or other Estate, or any part there.

to the value of twenty
 pounds, to the end and
 purpose to hinder the execution
 of the Statute, or of any other
 Statute, or there-
 upon, delay, or hinder
 his Creditors of the same,
 shall not upon his or her ex-
 position discover unto the said
 Commissioners, and (if it lie in
 his or her power) deliver unto
 the said Commissioners, all that
 his Goods, and Chattels, so
 seized, and lawfully
 taken away, as aforesaid, or
 his or her, his or her means,
 or his or her, from the said
 Commissioners, or that cannot
 be recovered unto the said
 Commissioners that he or she
 hath sustained some casual loss,
 whereby he or she is disabled to
 pay what he or she then owes,
 or may be indebted for such
 loss or abuse, at the Assizes or
 General Sessions, to be holden
 before

before the Judges of Assise, or Justices of the Peace of the County or place, where he or she shall become Bankrupt: And upon such Indictment or Indictments, the Bankrupt be thereof convicted, he or she so convicted, shall be set upon the Pillory in some publike place, for the space of two hours, and have one of his or her ears nailed to the Pillory, and cut off.

And for that some doubt is conceived, whether the Commissioners in case of resistance, have power by the former Law, to break open, or cause to be broken open, the House or Houses of such Bankrupts, which if they have not, the remedies by the former Lawes given, will be of little effect: Be it therefore enacted, That in the execution of the said Commission, it shall be lawful for and for the said Commissioners, or the greater part of them,

Chattels, and other Estates
 such Bankrupts, &c. and among
 his other Creditors, Be it eno
 ed that the Commissioners,
 the greater part of them, shal
 and may examine upon oath,
 by any other ways or means,
 to them shall seem meet, any
 son or persons for the finding out
 and discovery of the truth
 certainty of the several Deb
 due, and owing, to all such Cr
 dited and Creditors, as shall be
 relief by such course of Commi
 sion to be sued forth, as afore
 said: And that all and every
 Debtor and Creditor, having
 security for his, or their several
 Debts, by Judgment, Statute
 Recognizance, Specialty, with
 penalty, or without penalty, or
 other security, or having no secu
 rity, or having made Attachment
 in any other place
 by virtue of any custom, or
 used of the Goods and Chattels
 relating to

of any such Bankrupt,
 where there is no execution or
 return served and executed, up-
 on the Lands, Tenements,
 Chattels, Goods, Chat-
 tels, and other estate of such
 Bankrupt, before such time, as he
 shall, or do become Bank-
 rupt, shall not be relieved upon
 any such Judgment, Statute,
 Recognizance, Specialty, At-
 tachment, or other Security,
 for more than a ratable
 part of their just and due debts,
 due to the other Creditors of the
 said Bankrupt, without respect
 of any such penalty, or greater
 contained in any such Judg-
 ment, Statute, Recognizance,
 Specialty with Penalty, Attach-
 ment, or other Security. so not
 And as it further enacted, that
 shall happen any the
 Lands, Tenements, Goods,
 Chattels, Debts, or other e-
 state of any Bankrupt, to be
 extend-

tender, after such time as he
 shall become a Bankrupt, or
 any person or persons, under the
 loan or pretence, of his or their
 being an Accomptant, or any
 indebted unto our Sovereign
 Lord the Kings Majesty, or
 heirs or Successors, then
 then it shall be lawful, to, and for
 the said Commissioners, to ex-
 amine upon oath whether the
 Debt were due to such Debtor
 or Accomptant, upon any bar-
 gain or contract originally made
 between such Accomptant, and
 the said Bankrupt, the said De-
 btor or Accomptant, and his,
 executor, administrator, and his
 goods or contract was originally
 made, to, and with any other per-
 son or persons; then the said
 Debtor or Accomptant, or for the
 use and trust of any other person
 or persons, then it shall and law-
 fully shall be lawful for the said
 Commissioners, or the greater

part of them to order and dispose
 of all such Land, Tenements,
 Creditments, Goods, Chattels,
 and Debts so extended, as
 aforesaid, to and for the use of
 the Creditors, which shall be
 done by the said Commissioners,
 so that the order and disposi-
 tion of the said Commissioners,
 of the greater part of them, shall
 be good and available against the
 extent, and against all per-
 sons claiming, from, by, or under
 the said extent: And that
 every person and persons, to whom
 the said Lands, Tenements,
 Goods, and Chattels so extend-
 ed, shall be bargained, sold, granted,
 or assigned by the Commission-
 ers aforesaid, or the greater
 part of them, shall have good re-
 medy to have, demand, and recover
 the same, against such per-
 sons and persons, who shall be
 the same: And for that it of-
 ten falls out, that many persons

before they become Bankrupts
do convey their Goods to other
men, upon good consideration,
yet still do keep the same, and are
reputed the owners thereof,
and dispose the same as their
own.

Be it enacted, that if at any
time hereafter, any person or
persons shall become Bank-
rupt, and at such time as
they shall so become Bankrupts
shall by the consent and permis-
sion of the true owner, and pro-
prietary, have in their possession,
order, and disposition, any Goods
or Chattels, whereof they shall
be reputed owners, and take up-
on them the sale, alteration, or
disposition, as owners, that in
every such case, the said Com-
missioners, or the greater part of
them, shall have power to sell and
dispose the same, to, and for the
benefit of the Creditors, who
shall seek relief by the said Com-
missioners.

...as fully as any other part
of the estate of the Bankrupt and
the better payment of debts,
and encouraging men to become
Bankrupts, and to be
it is ordered, that the
Commissioners, or the greater
number of them, shall have
power by virtue of this Act, to
be directed, with or without writ
and otherwise, after the making
of, in Council of his Majesties
Court, of Record, to Commission
any grand Jurors, Tellers,
Auditors, and others,
and any Bankrupt is, nor
shall be in any way seized of any
real or personal estate, or possession, or
reversion, remainder, and other
rights, or reversion, or remainder, or
shall be in the Kings Majesties
Court, or in any Court, or of the
or of provision of his Majesties
or successors, to any person or persons,
or

for the relief and benefit
of the Creditors of all
Bankrupts and that all
every such grants bargains
sales, and conveyances shall be
good and available to the Law to
such person or persons and their
heirs and assigns the said Bankrupts
and against all and every
the Officers of the body of such
Bankrupts, and against all and
every person and persons taking
any estate, right, title, or in-
terest, by, from, and under the said
Bankrupts, and every such person
such person shall become Bankrupt
and against all and every
that person and persons who
for any manner the said Bankrupt
by any means, or by any other
ways or means, might or off, or
debt from any remainder, lease, or
fine, rent, or other title or possession
from, here and hereafter the said
Bankrupts, and every such person
or persons who, or by any means

And
h
And

And he it further enacted,
 That any person that now is,
 hereafter shall become a Bank-
 rupt, hath heretofore granted,
 conveyed, assured, or shall at
 any time hereafter, grant, con-
 vey, or assure any Lands, Tene-
 ments, Hereditaments, Goods,
 Chattels, or other estate, unto
 any person or persons, upon con-
 dition, or power of redemption,
 at any day to come, by payment of
 money, or otherwise, That it shall
 and may be lawful, to and for
 the said Commissioners, or the
 greater part of them, before the
 time of the performance of such
 condition, to assign and appoint
 unto their hands and seals, such
 person or persons, as they shall
 think fit, to make tender or pay-
 ment of money, or other perfor-
 mance, according to the nature of
 the condition, as fully as the
 bankrupt might have done, and
 the said Commissioners, or the
 greater part of them, shall

the greater part of them, shall after such tender, payment, or performance, have power to sell, and dispose of such Lands, Tenements, Hereditaments, Goods, and Chattels, and other estates so granted, conveyed, or assured upon condition, to, and for the benefit of the Creditors, as fully as they may sell or dispose of any the estate of the Bankrupt.

Provided further, that no Purchaser, for good and valuable consideration, shall be impeached by virtue of this Act, or any other Act heretofore made against Bankrupts, unless the Commission to prove him, or her a Bankrupt, be sued forth against such Bankrupt within five years after he, or she shall become a Bankrupt.

Provided further, and be enacted by the Authority aforesaid, that this Act, and all other Acts of Parliament, heretofore made

made against Bankrupts, shall extend to Strangers born, as well Aliens, as Denizens, as effectually, as to the natural born Subjects, both to make them subject to the Laws as Bankrupts, as also to make them capable of the benefit of contribution, as Creditors by those Laws. Stat. 4 H. 8. 4. 13 El. 7. 1 Jac. 15.

Stat. 14 Car. 2. Chap. 24.

Whereas divers Noblemen and Gentlemen, not bred up in Trade, have notwithstanding put great Stocks into the East-India and Guiny Company, it is declared that no persons Adventurers for putting in Money or Merchandise into the said Companies, or for adventuring or managing the Fishing, called the Royal Fishing Trade, shall be taken or reputed a Merchant or Trader within any Statutes for Bank

Bankrupts, or be liable to the
same.

Provided that persons tra-
ding and trafficking in any other
way or manner than the said
Companies or Fishing shall be
liable to the Commission of
Bankrupts.

A Verdict and Judgment
against Sir Jo. Wollaston as a
Bankrupt for trading in the East
India Company reversed and
made void. Provided, not to a-
void any sale or disposition of his
lands or goods made by virtue
of the Commission of Bank-
rupts.

To the Right Honorable, &c.

In most humble manner com-
plaining, sheweth unto your
Lordship your daily Orators, J.
of A. in the County of D. Gent.
and W. P. of C. in the County of
Esq; as well for them-
selves, as for all others the Credi-
tors of R. D. of the Parish of M.
in the City of London Merchant,
that whereas the said R. D. using
and exercising the Trade of Mer-
chandize, by way of Bargaining,
exchange, Bartering and Chevi-
ance, seeking his Trade of living
by buying and selling, upon good
and just causes, for Wares and
Merchandizes to him sold and de-
livered, and also for ready money
to him lent, being indebted to your
Orators, and others his Creditors
in several and several sums of mo-
ney, amounting in the whole to
the

the sum of *£c.* and upwards;
of late, that is to say, about the
Moneth of *November* last did be-
come Bankrupt, within the several
Statutes lately made against Bank-
rupts, to the intent to defraud and
hinder your said Orator, and all
other his Creditors of their just
Debts and Duties to them due,
and owing (*viz.*) within the
Statute made in the Parliament
begun and holden at *Westminster*
the second day of *April* in the thir-
teenth year of the Reign of our late
Sovereign Lady Queen *Elizabeth*
concerning Bankrupts: and with
in the Statute made in the Parlia-
ment begun and holden at *West-*
minster aforesaid, the nineteenth
day of *March* in the first year of
the Reign of our late Sovereign
Lord King *James* of *England*
France, and *Ireland*, and of *Scot-*
land the seven and thirtieth, Intit-
led, *An Act for the better relief*
the Creditors against such as shall be
com

Bankrupts; as also within the
 Statute made in the Parliament
 begun and holden at Westminster
 the nineteenth day of February in
 the one and twentieth year of the
 reign of our said late Sovereign
 Lord King James of England,
 France and Ireland, and of Scotland
 the seven and fiftieth, Intituled,
 for the further description of
 Bankrupt, and relief of the Credi-
 tors against such as shall become Bank-
 rupt, or within some or one of
 them. In tender consideration
 whereof, may it please your Lord-
 ship to grant unto your Orators
 his Majesties most gracious Com-
 mission to be directed to such and
 so many wise, honest, and dis-
 creet persons as your Lordship
 shall seem meet, authorizing them
 thereby, not only concerning the
 said Bankrupt, his Body, Lands,
 Tenements, Free-hold and Custo-
 mary Goods, Debts, and other
 things whatsoever, but also con-
 cerning

cerning all other persons who
 by concealment claim, or or
 wife do or shall offend touch-
 ing the premises, or any part
 thereof, contrary to the true in-
 tent and meaning of the same Sta-
 tutes. To do and execute all and
 every thing and things whatsoe-
 ver, as well for, and towards sa-
 tisfaction and payment of the said
 Creditors, as towards and for all
 other intents and purposes, ac-
 cording to the Ordinance and
 Provision of the same Statutes.

And your Orators shall pray, &c.

CHARLES

What he is discovered { 1. By a general description. Sect. 1, 2.
2ly. { By his Trade. 4, 5, 6, usq; ad Sect. 11.
By his demeanour. 12, 13, 14, usq; ad Sect. 25.
By the final cause of all. Sect. 26.

a Bank-
pt, Note

The proceeding a-
gainst, and punish-
ment of him

1. In general he shall be accompted a Bankrupt, and made thereby incapable to dis-

1. Immediately appointed by the Act; and therein note { 1. What
2. Their
set forth

2ly. In parti-
cular by per-
sons

2ly. Mediately
authorised by
Lord Chancel-
lor

2ly. Their
authority

1. Their Commission. Sect. 36.

1. As to the Bankrupts person. Sect.

1. What it is { real.
personal

2. As to his
Estate

2ly. The
means of dis-
covery

as to the
persons

3ly. Their accompt.

4ly. Their remedie, if
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Orators shall pray, &c.

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CHARLES

What he is
discovered

- 1. By a general description. Sect. 1, 2.
- By his Trade. 4, 5, 6, usq; ad Sect. 11.
- 2ly. By his demeanour. 12, 13, 14, usq; ad Sect. 25.
- By the final cause of all. Sect. 26.

In a Bank-
rupt, Note

The proceeding a-
gainst, and punish-
ment of him

- 1. In general he shall be accompted a Bankrupt, and made

- 1. Immediately appointed by the Act;

2ly. In parti-
cular by per-
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1. As

2ly. Their
authority

2. As to
Estate

3ly. Their accompr

4ly. Their remedie,
fued

and made thereby incapable to dispose of his own. Sect. 28.

Act; and therein note { 1. What they are. Sect. 29.

2. Their authority set forth

1. Generally. Sect. 29.

2. Particularly

1. Touching his person. Sect. 30.

2ly. As to his Estate and therein note { 1. The way of discovering it. 32, 33, 34.
2. The disposal of it. Sect. 35.

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other persons

what persons. Sect. 78.

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3. By distribution

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compt.

remedie, if

What he is }
 discovered }
 By his Trade. 4. 5. 6. 7.
 By his conversation. 1. 2. 3.
 By the kind of his life.

1. In general he shall be

in a book

1. In

The preceding a-
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 ment of him

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CHARLES the Second by
 the Grace of God, King of
 England, Scotland, France, and
 Ireland. Defender of the Faith, &c.
 To our trusty and well-beloved A. B.
 of E. in the County of D. Gentl.
 S. M. of H. in the County of W.
 Esq. Greeting. Whereas we are in-
 formed that R. D. of E. in the City
 of London Merchant, using and ex-
 ercising the Trade of Merchandise by
 way of Bargaining, Exchange, Bar-
 tering and Chevisance, seeking his
 Trade of living by buying and sel-
 ling, did
 become Bankrupt within the several
 Statutes made against Bankrupts, to
 the intent to defraud and hinder T.
 B. of A. in the County of D. Gent.
 and W. P. of C. in the County of
 E. Esq; & others his Creditors of their
 just Debts and Duties to them due,
 and owing, We minding the due exe-
F
cution

cution as well of the Statute touching Orders for Bankrupts in the Parliament begun and holden at Westminster the second day of April in the thirteenth year of the Reign of our dear Sister Elizabeth late Queen of England made and provided : As of the Statute made in the Parliament begun and holden at Westminster aforesaid, the nineteenth day of March, in the first year of the Reign of our late dear Grandfather King James of England, France, and Ireland, and of Scotland the seven and thirtieth, Intituled, An Act for the better relief of Creditors against such as shall become Bankrupt : And also of the Statute made in the Parliament begun and holden at Westminster aforesaid, the nineteenth day of February in the one & twentieth year of the Reign of our said late dear Grandfather King James of England, France, and Ireland, and of Scotland the seven and fiftieth, Intituled, An Act for the further

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ment of the said Creditors, as towards, and for all other intents and purposes according to the Ordinances and provision of the said Statutes, willing and commanding you, four, or three of you whereof you the said A.B. to be one, to proceed to the execution and accomplishment of this our Commission according to the true intent and meaning of the same Statutes, with all diligence and effect, as our special trust is in you. Witness Our self at Westminster the, &c.



What a Bankrupt is , and his Description.

I. **F**IRST in General , the word *Bankrupt* , is derived of the French word *Banqueroutte* , which signifieth a breaking , or becoming a Bankrupt : and *Banquerouttier* , signifieth a Bankrupt ; and *faire Banqueroute* , is as much as *solvum pertere* , with the Romans : the composition of the French word is from *Banque* , which is as much as *Alensa* in Latine , and *route* , which is the same with *Vestigium* , taken for a sign or mark left in the place from whence a Table had been removed ; in the same sence as we in English say a *Cartroutte* , viz. the remaining impression of a Cart-wheel. The Original seemeth to be taken from the Roman *Mensarii* , who had their *Tabernaculas* and *Mensas* : (*Taberna* being taken for Shops , so called *a tabulis* , quibus claudabantur) and these were seated in public

F 3

lique places, from which when they were disposed to slip away and delude their Creditors, they left only of these Shops some *Vestigia*, or signs behind them: *Vide Cowel, & Minshaw verbo Bankrupt.*

His descrip-
tion.

(2.) In the Statute of 34 H. 8. cap. 4. a Bankrupt is thus described: viz. *Whereas divers and sundry persons, craftily obtaining into their hands great substance of other mens goods, do suddenly flie into parts unknown, or keep their Houses, not minding to pay, or restore unto any of their Creditors their Debts and Duties, but at their own wills and pleasures, consume the substance, (obtained by credit) of other men, for their own pleasures and delicate living, against all equity and good Conscience.*

(3.) Now more particularly, A Bankrupt is set forth and described in the several Statutes made against Bankrupts, First, by his Qualitie and Occupation: Secondly, by his Demeanors and Carriage.

His Quality.

(4.) For the first⁶, as to his Quality and Occupation, he is thus described by 13 El. chap. 7. and 1 Jac. chap. 15. *If any Merchant, or other person, using or exercising the trade of Merchandizing,*
by

by way of Bargaining, Exchange, Re-
 change, Barter, Chevifance, or otherwise
 in grofs, or by retail, or seeking his or
 their Trade of living by buying and fel-
 ling, and being a Subject born of this Subjects.
 Realm, or of any the Queens Dominions,
 or Denizen, &c. Which Statute as ap-
 pears extends only to Subjects born, or
 Denizens: but the Statute of 21 Jac.
 cap. 19. extends likewise to Strangers;
 at the later end of which Statute there
 is this Proviso, viz. *Provided further,*
and be it enacted, &c. that this Act, and
all other Acts of Parllament, heretofore
made againſt Bankrupts, ſhall extend to
Strangers born: as well aliens, as De- Strangers.
nizens, as effectually as to the natural
born Subjects, both to make them sub-
ject to the Laws as Bankrupts, as alſo to
make them capable of the benefit or
contribution, as Creditors by thoſe
Laws.

(5.) A Shoo-maker may be a Bank-
 rupt, because he lives by buying of Le-
 ther, and selling of it again in Shoos.
Crook part 3. fol. 31. Cramp and Barn.
 An Inn-keeper is not within the Sta-
 tutes of Bankrupts, for although he buy
 provision to be spent in his house, and
 utters it, yet he doth not properly sell it,

but utters it at such Rates, as he thinks to be reasonable gains, and the Guests do not take it, or contract for it, at a certain price; and if he take excessive prices, he is indictable; and Inn-keepers have many times Hay, Corn, &c. of their own growth, and their gains arise by the attendance of their servants, and furniture of their House and Rooms for the accomodation of his Guests. *Crook 3 part. fol. 549. Crisp vers. Prat.*

(6.) The like I suppose may be said of a Taylor, for his Trade is not by buying and selling, but by making of the Garment, and in what he buyeth, he doth it, but as a servant to his Customers, and ought not to take any more than he lays out.

(7.) *Sir John Wolstenholme*, one of the East-India Company, a person of 3000 l. lands a year; yet in regard he had a stock in that Company, and received the proceed thereof; he was held to be within the Statutes of Bankrupts, although he did not get the greatest part of his living by buying and selling; notwithstanding the words of the Statute: [*Seeking his or their Trade by buying and selling:*] for the Statute shall be expounded beneficially for the Creditors: and

and it is not the Quality of a mans Person, or the greatness of his Estate, that exempts him out of the Statute. *Hughes Abridgment, fol. 315. Case 7.*

(8.) A Feme covert, sole Merchant in *London* (being such an one as driveth one Trade, and her Husband another) by the custome of that City may bring an action without her Husband, and be sued without her Husband, 1 *E. 4. pag. 13.* and if her Husband be named with her in an action brought against her, it is but for conformity: *contra*, if she exercise the same Trade with her Husband, although she buy and sell, &c. for it shall be intended as servant to her Husband: *Croke 3. pag. fol. 69.* also a feme covert sole Merchant, may give away and dispose of her goods without her Husband, 21 *H. 7. 18. pag. 29.* A Feme covert sole Merchant may be a Bankrupt, for if the Custom of *London* doth create in her a distinct property from her Husband in the goods she deals in; by the same reason she alone may become a Bankrupt, within the Statute, and her husband not included, and her husband be also a Bankrupt, and she not thereby included. Yet Quere, for the wife is *sub potestate viri*, by the Law of God, and Nature, from which
no

no custom can exempt her ; and her husband when he please may determine her sole Merchantship ; and there it may seem reasonable , that his being a Bankrupt should involve her estate , and that her being a Bankrupt should involve his Estate, because it is by his permission and privity she drives a distinct Trade. *Vide Stones Lecture 162.* who is of opinion that if she absent her self, &c. and her husband be *non-solvent* , both will become Bankrupts , for it was his folly to suffer her to be sole Merchant.

(9.) A Merchant gives over his trading ; and seven years after becomes *non-solvent* , for money he took up, while he was a Merchant , he shall be a Bankrupt : *Stones Lecture, fol. 7. contra* , for Debts contracted since he gave over Trading ; so for Debts due before he gave over trading , and continued upon new security taken since he gave over his trading. *Ibid.*

(10.) A Grafter that hireth grounds and buyeth Cattel and feedeth them, and then sells them again , may be a Bankrupt, and is within the Statutes of Bankrupts, saith *Stone : contra* , if he grafe his own Free-hold : *Stones Lecture 165.* Yet Quere, of the last point , for if the grafe

grafe them in his own Free-hold, yet notwithstanding he seeketh his Trade of living by buying and selling, though not wholly by buying and selling. *Vide Sect. 7.*

(11.) A Clothier that sets poor people on work, but himself doth only buy the wool, and sell the Cloth, maybe a Bankrupt; *contra*, if he work himself, and keepeth Looms and servants: saith Mr. Stone in his *Lecture*, fol. 165. but Quere of the last point; why he may not (although he work himself) be within the Statutes of Bankrupts, as well as a Shoo-maker who buyeth Lether and makes it up into Shoos, and sells them: for a Clothier buyeth Wool, and makes it up into Cloth, and sells it. *Vid. Sect. 5.* A Scrivener may be a Bankrupt, by 21 *Jas. chap. 19.*

(12.) Thirdly, a Bankrupt is set forth and described by his Demeanour, or Carriage; which is, 1. his withdrawing himself: as it is in 34 *H. 8. cap. 4.* *Whereas divers and sundry persons craftily obtaining into their hands great substance of other mens, do suddenly fly into parts unknown, or keep their houses: and by 13 El. cap. 7.* he is said to be such an one as shall depart the Realm, or begin to

His Demeanour.

to keep his or their House, or Houses, or otherwise, &c.

(13.) A Merchant or Trader, absents himself for fear of being arrested, by a Writ *de excommunicato capiendo*, so if a Decree in Chancery be made against him to make a Conveyance, and he withdraws himself for fear of being attached for not performing of the Decree: It seems in neither of these cases doth his withdrawing make him a Bankrupt; *contra*, if the substance of the Decree had been for payment of Money, because in such case his withdrawing had been for Pay, to defraud, or delay the payment of his Debt: *Stones Lecture*, fol. 10. If he depart the Realm, and long time after his departure becomes *non-solvent*, his absenting himself in such case brings him within the Statutes of Bankrupts, *Ibid.* 133.

(14.) Secondly, Keeping of their Houses: withdrawing themselves, and keeping their houses, as it is in 13 *Eliz.* cap. 7. and 1 *Jac.* cap. 15. If a Trader upon notice of Process issued forth against him, keeps his house to secure himself from the arrest; and after goeth forth again; and then upon like notice keeps his house, and then again goeth forth:

forth : this bringeth him not within the Statutes of Bankrupts ; because he uses to go at large, and his Policie will not always prevent the securing of Process on him, for he may be met withal unwittingly one time or other. *Crook, part 3. fol. 13. pag. 6.* If one that hath no house, sojourns sometimes at one place, and sometimes at another ; yet if he appears not abroad as formerly, nor can be found as formerly, this is an absenting himself (as is conceived) within the Statute of 13 *El. chap. 7.* where the words are, *or otherwise absents himself* : the same words are in 1 *Jac. cap. 15.*

(15.) Thirdly, taking of Sanctuary, as it is in 13 *El. cap. 7.* and 1 *Jac. cap. 15.* There be no Sanctuaries now in *England* ; therefore all priviledged places where the Kings Officers cannot come, is within these Statutes, as *Stone* conceives in his *Lecture, fol. 171.*

(16.) Fourthly, Such as shall suffer themselves willingly to be arrested : the words of the Statute of 13 *El. cap. 7.* are, *Or suffer him or her self willingly to be arrested for any Debt, or other thing not grown, or due for moneys delivered, wares sold, or any other just or lawful cause* : and by 1 *Jac. chap. 15.* It is, *Or shall*

shall willingly suffer him, or her self to be arrested for any Debt, &c. *ut supra*: and then adds, or shall willingly, or fraudulently procure himself or her self to be arrested, or his or goods, money, and chattels to be attached or sequestred, &c.

(17.) A Merchant &c. hath an impropriat Rectory; the Quire is not repaired, the Tithes are sequestred, it is no sequestration within the said Statute, for this is not his immediate procuring, although his default in not repairing the Church, might be a mean to procure it: *Stones Lecture 172.*

(18.) Fifthly, By suffering himself or her self to be outlawed, &c. 13 Ed. cap. 7. 1 Jac. cap. 15. Quere, if the party reverse the outlawry before the Commission of Bankrupt sued forth; whether his being out-lawed be within the Statute; and I conceive (with submission) it is not within the Statute; for I suppose the reason of this Clause may be, because the party by the out-lawry, intitlenth the King to his goods, &c. so that his end in so doing may be conjectured to deceive his Creditors, which cannot be intended when he after reverseth it: By Stone one out-lawed in Ireland,

is not thereby a Bankrupt here, because the Record is not pleadable here, fol. 172.

(19.) Sixthly, Yeelding himself or her self to prison. 13 *El. cap. 7.1 Jac. cap. 15.* This I conceive is to be intended a voluntary yeelding, and not when a man is imprisoned for non-payment of a Fine, &c. or any refractory carriage; for although the Act which causeth the imprisonment be voluntary, yet the imprisonment it self is involuntary; but *Que- re*, whether it be not a detention for Debt, within the following clause, mentioned hereafter in the next Section: for I suppose the Fine, after it is once imposed, becomes a Debt; but yet it may not be within the meaning of the Acts, which were made for the relief of Creditors, only who had intrusted the party offending, and not for a Fine judicially imposed for some contempt.

(20.) Seventhly, Or being arrested for Debt, shall after his or her arrest lie in prison six moneths or more upon that arrest; or upon any other arrest, or detention in prison for Debt, and lie in prison six moneths upon such arrest or detention, &c. 1 *Jac. cap. 15.* and in 21 *Jac. cap. 19.* It is thus; *Or being arrested*
for

for Debt, shall after his or her arrest lie in prison two moneths or more; upon that or any other arrest, or detention in prison for Debt. 21 Jac. cap. 19. Suppose he be arrested upon a Bond before the day of payment; for by the custom of London a Creditor may arrest a Debtor there before the day of payment to find sureties, Cook, lib. 8. 126. a. City of London case: and lie in prison two moneths, &c. I conceive this case to be within the Statutes, for the Debt ariseth upon the obligation, and is a Debt presently upon sealing and delivery of the Deed; and I conceive the action for which he is arrested must be an action of Debt: although the end of that arrest is not to enforce the payment of the Debt, but to find sureties in case the Creditor fears the Debtor to be too weak for his engagement; and in case the Debtor upon such arrest finds not sureties, his body is to continue in prison, as a pledge for the Debt; like Law I conceive in case of a single Bill, or a Debt arising upon a contract; for it is a Debt presently and before the day of payment. *Vide Crook, part 2. fol. 300. Tynam vers. Bridges.*

(21.) Eighthly, Or being indebted to any person or persons in the sum of 100 lib.

100 *lib.* or more, shall not pay, or otherwise compound for the same within six moneths next after the same shall grow due, and the Debtor be arrested for the same, or within six moneths after an original Writ sued out to record the said Debt, and notice thereof given unto him, or left in writing at his or their dwelling house, or last place of abode: 20 *Jac. cap.* 19.

(22.) Ninthly, Or being arrested for the sum of 100 *lib.* or more of just debt or debts, shall at any time after such arrest escape out of prison, or procure his enlargement by common or hired bayl. And in the said cases of Arrest, † or lying in prison for such Debt or Debts, or getting forth by common or hired bayl, he shall be judged a Bankrupt from the time of his first arrest. 21 *Jac. cap.* 19.

† Mentioned in 21 *Jac. cap.* 19.

(23.) Tenthly, Or shall either by himself, or others by his procurement, obtain any protection or protections; other than such person or persons as shall be lawfully protected by the privilege of Parliament. 21 *Jac. chap.* 19.

(24.) Eleventhly, or shall prefer or exhibit unto his Majesty, his Heirs or Successors, or unto any of the Kings
G Courts

Courts any Petition or Petitions, Bill or Bills against his or her Creditor or Creditors, or any of them, thereby desiring or endeavouring to compell or inforce them, or any of them, to accept of less than their principal and just Debts, or to procure time, or longer daies of payment, than was given at the time of their original contracts, 21 *Jac. cap. 19.*

(25.) Twelfthly, Or shall make or cause to be made any fraudulent grant or conveyance of his, her, or their Lands, Tenements, Goods or Chattels, to the intent, or whereby his, her, or their Creditors being subjects born, * shall or may be defeated or delayed for the recoverie of their just and true debts; as it is in 1 *Jac. cap. 15.*

* Vid. sect.
4 Where it
appears,
that stran-
gers are al-
so included.

(26.) In all which cases before recited, the Person offending is declared to be a Bankrupt, within the said Statutes: And the end or final cause of all such his demeanor, is express'd by 13 *El. cap. 7.* to be to defraud the Creditors of their just Debts, &c. and by 1 *Jac. cap. 15.* it is thus, To the intent that his, her, or their Creditors, being subjects born, shall or may be defeated or delayed from the recoverie of their just and true Debts; *ibid.* And by 21 *Jac. cap. 19.* All the
said

aid Statutes shall extend as well to Ali-
ens and Denizens, as to Subjects born.

The punishment, and proceedings against
Bankrupts, by 34 H. 8. Cap. 4.

(27.) *Nova*, By 21 Jac. cap. 19. it
is enacted, that all Statutes and Laws
formerly made against Bankrupts, and
for relief of Creditors, shall be in all
things largely and beneficially construed
for relief of the Creditors.

(28.) First, in General, He shall be In General,
accomplished a Bankrupt to all intents and
purposes: 13 El. cap. 7. 21 Jac. cap. 19.
1 Jac. cap. 15. and being a Bankrupt, he
is presently disabled, as to the disposal
of any part of his Estate, although it be
to some of his Creditors; for he is ut-
terly discredited by his becoming a
Bankrupt, and the Law will not trust him
with the distribution of his Goods, *vide*
Coke, lib. 2. 26. a: Case of Bankrupts.

(29.) Secondly, more Particularly, In Particu-
lar.
the Bankrupts are to be proceeded a-
gainst by Persons immediately autho-
rized by Act of Parliament, or mediate-
ly, the persons immediately authorized Touching
the Bank-
rupts Per-
son.
are set forth by 34 H. 8. cap. 4. to be
the Lord Chancellor or Lord Keeper for

the time being, Lord President, Lord Privie-Seal, or other of the Kings most Honourable Privie-Counsel, and the Chief Justice of either Bench for the time being, or three of them at the least; whereof the Lord Chancellor or Keeper of the Great Seal, Lord Treasurer, Lord President, or the Lord Privie-Seal to be one: who upon every complaint made to them in writing by any parties grieved, shall have power and authority by vertue of the said Act, to take by their wisdom and discretion, such orders and directions, as well with the bodies of the said offenders, where-soever they may be had, as well in their houses as elsewhere, by imprisonment of their Bodies, or otherwise; as also with their Lands, Tenements, &c. which they have in Fee-simple, Fee-tail, for term of life, term of years, or in the right of their wives; as much as the interest, Right and Title of the same offenders shall extend to or be, and may then lawfully be departed with, by the said offenders; and also with their monies, goods, chattels, wares, merchandises and debts, wheresoever they may be found or known, &c. 34. H. 8.

cap. 4.

So that the power given by the said Statute, relates either to the person or estate of the Bankrupt: First, as to this person, viz. If the offender doth withdraw out of the Kings Dominions, to defraud his Creditors; upon complaint thereof made in writing to the said Lords, having authority as aforesaid, they shall by vertue of the said Act, have power to award Proclamations to be made in such places as to them shall be thought meet and convenient; commanding by the same such offender, in the Kings name, to return with all convenient speed, into this Realm, and to yield his body before the said Lords, or one of them: And if the said person, within three moneths, after he shall have notice of such Proclamation: or, so soon after as he conveniently may, do not repair and yield his body as aforesaid: That then the body of all and every such offender and offenders, shall be adjudged, taken and deemed, to all intents and purposes, out of the Kings protection: and his Goods, Chattels, Lands, Tenements, and Debts, shall be by the order and discretion of the said Lords, impoyed and distributed amongst the offenders Creditors equally.

34 H. 8. cap. 4.

Touching
the Ran-
rupts estate.

(31.) Secondly, Touching the offenders estate observe (more particularly) first the power given to the Lords by 34 H. 8. for the discovering and obtaining of it : Secondly, for their disposal and ordering of it.

The disco-
very of it.

(32.) First, for the discovery and obtaining of it. The effect of that Statute is, That if, after any such Act or offence committed, and complaint thereof made to the Lords, as aforesaid, by any party grieved concerning the premises, who knowing, or suspecting any of the goods, chattels, wares, merchandizes, or debts of such offenders, to be in the custody, use, or possession, of any person or persons : or any person or persons to be indebted to any such offender or offenders, do make relation thereof to the said Lords, then they are impowred by the said Statute, to send for, and convent before them, such person or persons so known or supposed to have any such goods, wares, &c. in their custody, or to be indebted to the offender or offenders ; and upon their appearance, to examine them, and every of them ; as well by their Oaths, as otherwise, for an upon the specialty, certainty, true declaration, and knowledge, of all and singular

let such goods, wares, debts, &c. as be suspected to be in his, or their custody, use, &c. And if the person so examined, do not plainly disclose the whole truth of such things whereof he shall be examined touching the premises; then every such person or persons so examined, and not declaring the plain and whole truth, upon such proof thereof made, before the said Lords, as they shall judge sufficient in that behalf, shall lose and forfeit double the value of all such goods, wares, &c. so concealed, to be levied by the said Lords, by such ways and means as they shall think fit, the same to be distributed to the Creditors, in such manner as the Bankrupts Estate.

34 H. 8. cap. 4.

(33.) And that if any person or persons do fraudulently by covin or collusion demand any debt, or other thing by writing or otherwise, of such offender or offenders, other than such as he, or they can and do prove to be justly due before the said Lords, that then every such person or persons, so craftily demanding any such debt, &c. shall forfeit the double of what he shall so claim, &c. to be levied and employed as aforesaid.

(24.) So, if the Bankrupt (after he shall do those acts, whereby he is declared Bankrupt) shall suffer fraudulent recoveries against him of any debts, goods, &c. upon complaint thereof to them made, the Lords are impowred to convent before them the Recoverors; and after such fraud discovered the said goods, &c. so recovered shall be chargeable to the Bankrupts debts, and be disposed of to the Creditors (notwithstanding such Recovery.) 34 Hen. 8. cap. 4.

Disposal of
the Bank-
rupts estate.

(35.) Secondly, Observe the power given by that Statute to the Lords, for disposing and ordering of the Bankrupts Estate. First, they have power to cause the Bankrupts Lands, Tenements, Fees, Offices, Annuities, Goods, and Chattels, Debts, &c. to be viewed, rented, and appraised. Secondly, To make a sale of the said Lands, &c. or otherwise to order the same, for the true satisfaction, and payment of the said Creditors, rate and rate like, according to the quantity of their debts. Thirdly, And that every direction, order, bargain, sale, and other things done by the said Lords as as aforesaid in writing, signed with their hands, shall be good and effectual

actual in the Law, to all intents, &c. against the offenders, their heirs and executors for ever, as if done and executed by the offenders themselves. 34 Hen. 8. Chap. 4.

Which Statute of 34 H. 8. although it be now out of use; yet in regard I do not find it actually repealed, I suppose it will not be thought altogether superfluous to be taken notice of.

The proceedings against and punishment of the Bankrupt, by persons mediately authorised by Parliament.

(36.) The next things considerable, are the proceedings against, and punishment of the Bankrupt, by Commissioners or persons mediately authorised by Parliament, wherein take notice, first, of their Commission: and therein observe, first from whom obtained, the Lord Chancellour of England, or Lord Keeper of the Great Seal, for the time being, upon every complaint made unto him in writing, against any such person or persons being Bankrupt, shall have full power and authority by Commission under the Great Seal, to name and appoint such

Commissioners.

Their Commission.

such honest and discreet persons, as to him shall seem meet, &c. 13 Eliz. cap. 7. Secondly, by whom to be obtained, by the Creditors. Thirdly, when to be obtained, it must be within five years after that the party shall become a Bankrupt, or else it is not to prejudice purchasers. 21 Jac. chap. 19. the words of the Statute are, *Provided that no Purchaser for good and valuable consideration shall be impeached by vertue of this Act, or any other Act against Bankrupts, unless the Commission to prove him or her a Bankrupt, be sued forth against such Bankrupt, within five years after he or she shall become a Bankrupt.* ibid. Fourthly, The duration of the Commission, it is not determined by the Bankrupts death; for by 1 Jac. cap. 15. it is thus enacted, *Provided always, and be it enacted, that if after any Commission of Bankrupts be returned, and after sued forth, and dealt in by the Commissioners, the offender happen to die, before the Commissioners shall distribute the Goods, Lands, and Debts of the offenders, or any of them, by force of the aforesaid Statute of 13 Eliz. and this Statute, or either of them, That then notwithstanding the said Commissioners shall and may in that case proceed to execute,* in,

is, and upon the said Commission, for, and concerning the offenders goods, lands, tenements, hereditaments and debts, in such sort, as they might have done if the party offender were living. 1 Jac. 15.

(37.) If such, or such number of the Commissioners die, so that the rest cannot proceed; and thereupon a new Commission be granted to other Commissioners, they may call the surviving Commissioner or Commissioners before them, to give accompt for such part of the Bankrupts estate, whereof the old Commissioners made no distribution, as persons who have the Estate of the Bankrupts in their hands : *Stones Lecture, fol. 19. and 187.*

(38.) Secondly, Note the authority given the Commissioners, so commissioned as aforesaid, by several Acts of Parliament : First, as touching the Bankrupt himself. Secondly, as touching his Estate.

(39.) First, as to the Bankrupt himself, by the Statute of 13 El. chap. 7. it is thus set forth : *And be it enacted, that if any such person or persons, which is, or shall be indebted, do of purpose withdraw him or themselves out of, or from his or their usual mansion house or houses, that then*

To cause the Bankrupt to appear.

Proclama-
tions.

then upon complaint thereof made to the
Said Commissioners, the same Commis-
sioners, or the more part of them, shall by
virtue and authority of this present Act,
have full power and authority to award
five Proclamations, to be made in the
Queens Name, upon five sundry Market-
days, in such places, near the place where
such Bankrupt hath most commonly dwel-
led, or made his abode; commanding him
or them by the said Proclamations in the
Queens name, to return with all conveni-
ent speed, and to yeeld his, or their Body
before the said Commissioners, or one of
them, at such time and place, as by the
said Proclamation shall be appointed: and
if the said Person or persons do not ac-
cording to such Proclamation, repair and
yeeld his or their body as aforesaid, that
then the body of all and every such of-
fendor or offenders shall be judg-
ed, taken, and deemed to all intents and
purposes out of the Queens Protection;
And that every person and persons, that
shall willingly or unwittingly, receive, de-
tain, or keep secretly any person or per-
sons so demanded by Proclamation, as is
aforesaid, shall suffer such pain of impris-
onment of his, or their bodies, or pay such
Fine to our Sovereign Lady the Queens
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Majesty, her heirs, and Successors, as the
Lord Chancellor, or Lord Keeper of
Great Seal, being informed thereof by
Commissioners so to be appointed, as
aforesaid, or the more part of them
all seem meet and convenient, for their
offence or offences. 13 Eliz. chap.

(40.) And by the Statute of 1 Jac. ^{Warning}
15. The said Commissioners may ^{left in writ-}
before them, or the greater part of ^{ting.}
them, the said Bankrupt, and if upon law-
warning left in writing, at three seve-
ral times, at the dwelling place or house
where the said Bankrupt, his wife, or fa-
mily for the most part of his abode did
dwell, or remain, within one year next
before he, she, or they became Bank-
rupt; the said Bankrupt shall not appear
before the said Commissioners, or the
greater part of them, that then and from
thenceforth it shall be lawful for the
greater number of the said Commissio-
ners, to appoint to proclaim the said
Bankrupt, at such publike place, ^{Proclama-}
or places where the said Commissio- ^{tion.}
ners, or the greater part of them, shall
think meet, warning him, her, or them,
to appear before them, upon the said
Commission at some time appointed;
And

And that if upon five several Proclamations made in some publike place, the party offending, appear not before the said Commissioners, and yeeld his, her, or their bodies to them, or some of them the said Commissioners or greater part of them, shall or may award a warrant to such fit person or persons as they shall think meet to apprehend the body and bodies of the said offender and offenders; and to bring him, her, or them offending before the said Commissioners wheresoever the said party or parties offending may be found in places privileged, or not; to be examined by the said Commissioners, or the greater part of them. *1 Jac. chap. 15.*

Breaking
open houses
&c. to take
the Bank-
rupts.

(41.) And by *21 Jac. chap. 19.* The said Commissioners, or the greater part of them, in execution of the said Commission, or any other person or persons by them to be deputed by their warrant or warrants under their hands or seals have power to break open the house or houses, Chambers, Shops, &c. of the said Bankrupt, where the said Bankrupt, or his goods, &c. shall be; and to seize upon, and order the person, &c. of such Bankrupt, as by former Laws are appointed, &c. *21 Jac. 19.* And by *13 Eliz. chap. 7.* The

(XII)

The said Commissioners have power
given them, to take order by their dis-
cretion, with the body of the Bankrupt, &
wheresoever he or she may be had, ei-
ther in his or her houses, Sanctuary, or
anywhere, &c. *Ibid.* (42.) Secondly, Observe the power
of the Commissioners, as to the estate
of the Bankrupt; and therein take no-
tice, First, of what estate. Secondly,
of the means for the discovery, and obtain-
ing of it. Thirdly, their disposal of it.
*Of what Estate of the Bankrupt, the
Commissioners may dispose.*
(43.) First, Of the Bankrupts real
estate: Lands, tenements, and heredi-
taments, as well Copy-holds, or Cus-
tomary-holds, as free-holds, which he or
she shall have in his or her own right,
before he or she became Bankrupt, &c.
(44.) It is made by Mr. *Ston*
in his Lecture: That if there be
two jointly, and the one become Bank-
rupt, and dies, whether his part shall be
sold, because the survivor is not in by
it. But it seems to me, that the Bank-
rupt's part shall be sold, and that there
shall

shall be no survivor in this case. Fifthly, because the Bankrupts moiety is bound by the Statutes, by his becoming a Bankrupt. Secondly, the Bankrupt had power to sell the same in his life time, and might depart with it, and so within the words of 13 Eliz. cap. 7. the words are [*such use, interest, right or title, as such offender or offenders shall have in the same, which he or she may lawfully depart withal.*] vide after Sect. 46. Thirdly, by 1 Jac. chap. 15. The Commissioners after the Bankrupts death, may proceed in execution, in and upon the Commission, for and concerning the offenders lands, tenements, &c. in such sort as if the offender had been living, which they cannot do in the case before, if the survivorship take place.

Copy-hold. (47.) It was agreed by the Justices that Copy-holds are within the intent and purview of all the Statutes concerning Bankrupts, and may be sold by the Commissioners. Some doubt whiereof was made, because they are named in one clause of 13 Eliz. and not in 1 Jac. chap. 15. or 21 Jac. chap. 19. for the same being in the first Statute, and the other Statutes being made in further confirmation and approbation thereof, they ought

ought to be expounded liberally and shall be construed accordingly, to make as strong provision, as they may against the Bankrupt, *Crook, 3. part 550. Crisp against Pratt.*

(46.) And all such Lands, tenements, hereditaments, as such person, ^{2.} Lands purchased jointly with the wife. [viz. the Bankrupt] shall have purchased, or obtained for money or other recompence jointly with his wife, children, or child; to the only use of such offender or offenders, or such use, interest, right, or title, as such offender or offenders, then shall have in the same, which he or she may lawfully depart withal, *13 Eliz. cap. 7.*

(47.) A man purchaseth Lands to him, and his wife, and his son, and two years after he becomes a Trader; and four years after he becomes a Bankrupt, these Lands shall not be sold by the Commissioners of Bankrupt, and are out of the meaning of the Statute, for else none might know with whom to deal by way of marriage or otherwise, when a person who is not a Tradesman, settles Lands upon his wife and children, bona fide, and after becoming a Tradesman, and then a Bankrupt, the said Acts of Parliament shall overthrow a Conveyance

is duly settled. *Crook, 3 part. fol. 550.*

Crisp versus Pras.

3.
Lands in
trust.

(48.) Lands, tenements, &c. which any person or persons hath in trust to any secret use of any such offender or offenders, &c. 13 *Eliz. chap. 7.* Lord and Tenant are; the Tenant makes a Feoffment to deceive the Lord of the Wardship, and then becomes a Bankrupt, these Lands shall be sold by the Commissioners, for although the conveyance was only fraudulent as against the Lord, yet there was a trust between the Feoffor and Feoffee, *Stones Lecture, fol. 185.*

4.

(49.) Mannors, Lands, Tenements, &c. conveyed or procured, or caused to be conveyed by the Bankrupt to any of his children, or other person or persons, except the same shall be purchased or conveyed for, or upon marriage of any of his or her children, both the parties married being of the years of consent, or some valuable consideration. 1 *Jas.*

15.

(50.) A Tradesman in consideration of marriage, makes a conveyance of Lands, to the use of himself and his wife, and held to be within the Statute of 1 *Jacobi Stiles Reports, fol. 288. Tucker versus. Cosh.*

51. Also

(51.) Also the said Commissioners ^{5.} have power to sell Lands and Tene- <sup>Lands con-
veyed upon
condition.</sup> ments conveyed, upon condition; by 21 Jac. cap. 19. where it is thus, *If any person that now is, or hereafter shall become a Bankrupt, have heretofore granted, conveyed, or assured, or shall at any time hereafter grant, convey, or assure any Lands, Tenements, Hereditaments, goods, Chattels, or other Estate, unto any person or persons, upon condition or power of redemption at a day to come, by payment of money or otherwise, that it shall and may be lawful to and for the said Commissioners, or the greater part of them, before the time of the performance of such condition, to assign and appoint under their hands and seals, such person or persons as they shall think fit to make tender or payment of, money, or other performance, according to the nature of such condition, as fully as the Bankrupt might have done; And that the said Commissioners, or the greater part of them, shall after such tender, payment, or performance, have full power to sell, and dispose of such Lands, &c. so conveyed upon condition, for the benefit of the Creditors, as fully as they may sell or dispose of any the estate of the Bankrupt.* 21 Jac. chap. 19.

(52.) *Quere*, Whether the Commissioners may not by the equity of the Stat. appoint one to enter, for a condition broken; As if a trader makes Feoffment, upon condition to be performed on the part of the Feoffee; the Feoffee breaks the Condition, and before entry, the Feoffor becomes a Bankrupt: It should seem, the Commissioners may take advantage hereof; for the Statutes shall be liberally expounded for relief of the Creditors: if not, yet it seems to be comprehended within the words of 13 *El. cap. 7.* whereby power is given to the Commissioners, to take order and direction with the Bankrupt's Lands, &c. for such use, interest, right or title, as such offender or offenders shall have in the same, which word (Title) includes, as I conceive, an entry for a condition broken: yet *Stone* makes a *quere* of it in his Lecture, fo. 12.

Lands in-
tailed.

(53.) Lands, Tenements, &c. intailed: The Commissioners, or the greater numbers of them, shall have power by deed indented and inrolled within six moneths, &c. to grant, bargain, sell and convey any Manors, Lands, Tenements or Hereditaments, whereof the Bankrupt is, or shall be in any wise seized

seized in Tail, in possession, reversion or remainder (and whereof no reversion or remainder is or shall be in the Kings Majesty, his Heirs or Successors, of the gift or provision of his Majesty his Progenitors, Heirs or Successors:) to any person or persons, for the relief and benefit of the Creditors, of all such Bankrupts: And that all and every such grants, &c. shall be good and available in Law against the Bankrupt, his Issue, and all claiming by, from, or under him, since the time that he became Bankrupt: and also against all other persons, whom the Bankrupt by common Recoverie, or other waies or means might cut off or debar from any Remainder, Reversion, Rent, Profit, Title, or possibility into, or out of any of the said Manors, Lands, Tenements or Hereditaments, 21 Jac. cap. 19.

(54.) Also Lands, Tenements, &c. ^{Lands descended.} purchased by, or descended or come to the Bankrupt before his debts payed or agreed for, as appears by 13 Eliz. cap. 7. where it is thus; That if any person or persons, which is, or shall be published and declared to be a Bankrupt, by vertue of this Act, shall at any time hereafter, purchase any Lands, Tenements, Here-
dita-

ditaments, Free or Copy; or Offices, Fees, Goods or Chattels; or that any Lands, Tenements, Hereditaments, Free or Copy, Offices, Fees, Goods or Chattels, shall descend, revert, or by any means come to any such person or persons being Bankrupts, as is aforesaid: before such time as their debts due to their Creditors shall fully be satisfied, and payed, or otherwise agreed for: That then the said Lands, &c. shall be sold by the said Commissioners, or the more part of them, for and towards the payment of the Creditors, in such manner, as other Lands, &c. of the Bankrupts, which they had when they were first declared to be Bankrupts, should or might have been, &c. 13 El. cap. 7.

(55.) If after the commission awarded, &c. and distribution made of all the Bankrupts Estate, towards the satisfaction of the Creditors; Every Creditor having an equal part: Lands, Goods, &c. descend or come to the Bankrupt; Mr. Stone makes a *quere* (fo. 17.) whether in such case, they shall be subject also to a new sale or distribution: And it seems that they shall, for the Commissioners power is not fully executed untill the Creditors be satisfied.

(56.) The Commissioners have also ^{Lands ex-}
 power to sell Lands, Tenements, &c. ^{tended,}
 of the Bankrupts extended, by such as
 pretend to be accomptants to the King;
 by 21 Fac. cap. 19. It is thus; If it shall
 happen any Lands, Tenements, &c.
 Goods, Chattels, Debts, or other Estate
 of any Bankrupt to be extended, after
 such time as he or she is become a Bank-
 rupt, by any person or persons, under co-
 lour or pretence of his or their being ac-
 comptant, or any waies indebted unto our
 Sovereign Lord the Kings Majestie, his
 Heirs or Successors: That then, it shall
 and may be lawfull, to and for the said
 Commissioners, to examine upon Oath,
 whether the said debt were due to such
 debtor or accomptant, upon any bargain
 or contract originally made between such
 accomptant, and the said Bankrupt, &c.
 and his or their Servants: And if the
 said Bargain or Contract was originally
 made, to and with any other person or
 persons, than the said Debtor or Accomp-
 tant, or for the use or trust of any other
 person or persons: Then it shall and may
 be lawfull, to and for the said Commis-
 sioners, or the greater part of them, to order
 and dispose of all such Lands, &c. to and
 for the use of the Creditors, which shall

seek relief by the said Commission: And that the order and disposition of the said Commissioners, or the greater part of them, shall be good and available against the said extent; And that such person and persons, to whom the said Lands, &c. shall be bargained, sold, &c. by the said Commissioners as aforesaid, or the greater part of them, shall have good remedy to have, demand, and recover the same, against such person or persons that shall detain the same, &c. 21 Jac. cap. 19.

Lands conveyed by the Bankrupt bona fide.

(57.) The Commissioners cannot sell any Lands, Tenements, Hereditaments, conveyed by any such Bankrupt (*bona fide*) before he became Bankrupt: At the later end of 13 El. cap. 7. there is such a Proviso, viz. Provided alwaies, that this Act shall not extend to any Lands, Tenements or Hereditaments, free or copy-hold, which heretofore hath been assured by any such Bankrupt; or hereafter shall be assured by any Bankrupt, before he became Bankrupt; so that alwaies such assurance be made, *bona fide*, and not to the use of the Bankrupt himself only, or his Heirs: And that the parties to whose use such assurance hath or shall be made, be not at or before the making of such assurance, privie,

And consenting to the fraudulent purpose
 any such Bankrupt, to deceive his
 creditors, 13 *El. cap. 7.* (58.) It was resolved, (*Cook lib. 2.*
6. a. case of Bankrupts) by the Court,
 that the Proviso concerning gifts and
 grants (*bona fide,*) doth not make any
 gift or grant good, which the Bankrupt
 made, after that he became Bankrupt,
 but to exclude him out of the penalty of
 the Act; I suppose this resolution should
 be applyed to that part of 13 *El. cap. 7.*
 which imposeth the penalty or forfeiture
 of double the value, for detaining or pos-
 sessing fraudulently by covin or collusion
 any debts, &c. Lands, Tenements, &c.
 of the Bankrupts, other than such as are
 due, &c. and the same to proceed *bona*
fide, without fraud or covin, &c. although
 in *Poulton*, the said Book and resolution
 is quoted in the Margine opposite to the
 Proviso; before set down in Sect. 57.

(59.) Also the Chattels and Goods
 of the Bankrupt are saleable, &c. by the
 Commissioners, 13 *El. cap. 7.* Personal
Estate.
 Chattels real, as Leases for years. A I.
Chattels
Real.
 Lease for years is made, Provided that
 the Lessee shall not alien; the Lessee be-
 comes a Bankrupt; It is a *Quere* in Mr.
Stones Lecture, fo. 15. whether the sale
 of

of the Commissioners be a forfeiture. To which it may be answered in the negative, that it is not, because this interest is transmitted by Act of Parliament, to which every man is intended party, and not by sale of the Lessee.

Offices.

(60.) Offices are likewise mentioned in 13 *Eliz. cap. 7.* and made saleable by the Commissioners; which by *Ston* in his lecture fo. 13. is intended to be Offices of Inheritance, &c. as the Warden of the Fleet, and such like, and not Offices of Trust, &c. And by 3 *H. cap. 12.* any Offices which concern the administration of Justice or Clerkship in any Court of Record, or which concern the Kings Treasure, Revenue, Customs, &c. cannot be bargained or sold for Money, but such bargain and sale is void; and both buyer and seller made incapable, &c. Therefore doubtless, such offices cannot be assigned by the Commissioners, in satisfaction of a Debt of the Bankrupts, nor are comprehended within the said Statute; there being other Offices that may be sold; and so the words of the Statute satisfied; and Offices of Trust are individually annexed to the person; *vid. Coke lib. 9. 48.* The *Earl of Shrewsbury's case*.

(61.) Secondly, The Bankrupts personal Estate, Goods or Chattels of the ^{2.} Chattels bankrupt, wheresoever to be found; by personal. *El. cap. 7.* are made saleable by the Commissioners: They may sell a Bankrupts goods in *Ireland*, *Stone* in his Lecture fo. 90. *A.* hath an advowson, the Church becomes void, and then *A.* becomes a Bankrupt: It is made a *Quere* Mr. *Stone* in his Lecture, whether the Commissioners may sell it; and I suppose it may be answered negatively, that they cannot sell it; for it is a thing in Reversion, and so not saleable by the Common Law; and no particular power is given by any of the Acts for sale of it, as there is for sale of Debts due to the Bankrupt, as hereafter appeareth: And without doubt, if the Commissioners present any one for money, it is Symoniac.

(62.) Leases, Goods, Chattels, or Debts of the Bankrupt, by him conveyed or procured to be conveyed or transferred to any of his Children, or other Person or persons, except the same shall be purchased, conveyed, or transferred, or upon marriage of any of his or her Children, both the parties married being of

of years of consent, or some valuable Consideration, 1 Jac. cap. 15.

(63.) Any Goods or Chattels that shall by any means come unto the Bankrupt, before such time as his Debts shall be satisfied or agreed for; as well as other Chattels which the Bankrupt had, when first declared to be a Bankrupt, 13 Eliz. cap. 7.

(64.) Goods and Chattels extended of the Bankrupts, by pretended assignees or debtors to the King; vide *devant*, Sect. 56.

Goods extended.

(65.) Goods and Chattels of the Bankrupt extended, or taken in execution. Goods of the Bankrupts were extended by virtue of a Statute; and the extent was before he became Bankrupt, but the *Liberate* after; and held that they could not be sold by the Commissioners of Bankrupts; because being extended they are in *Custodia Legis*; so that the cognizors have no power to give, sell, or otherwise dispose of them: And although the Cognizee hath no absolute property in them by the extent, and before the *Liberate*, because at the return of the *Liberate*

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erate, he may refuse them, if he will :
 et that is for the advantage of the Cog-
 nizee, and the Cognizor hath no proper-
 y in them, but only in case where the
 Cognizee refuseth them ; for the goods
 are bound by the *Teste* of the Writ of
 extent or execution sued : and when the
 liberate is sued, it hath relation to the
 extent ; and they are but as one ex-
 tent ; Crook, part 3, 149, 150. Audley
 versus Halsey.

(66.) Goods and Chattels, whereof
 the Bankrupt hath the possession and dis-
 posal as his own : The words of the
 Statute are, *Whereas many persons before*
they become Bankrupt do convey their
goods unto other men, upon good considera-
tion, and yet keep the same, and are repu-
ted owners thereof, and do dispose of the
same, as their own, Be it enacted, that if
any person or persons shall become a Bank-
rupt, and at such time as they shall so
become a Bankrupt, shall by the consent
and permission of the true owners or Pro-
rietors, have in their possession, order,
and disposition, any of the goods or chat-
tels, whereof they shall be reputed owners,
and take upon them the sale, alteration,
and disposition of them as owners, the
 Com-

Goods pos-
 sessed by the
 Bankrupt.

Commissioners, or greater number may sell, and dispose of the same, for the benefit of the Creditors. 21 Jac. 19.

(67.) Goods or Chattels passed away upon condition, or power of redemption by the Bankrupt. 21 Jac. 19. vide, before Sect. 51.

Debts.

(68.) Debts due to the Bankrupt are saleable, by 13 El. cap. 7. expressly; and although they are transferred into other mens names, by 1 Jac. chap. 15.

(69.) In an action upon the Case brought for words spoken by the Defendant against the Plaintiff, the Plaintiff recovered of the Defendant for Damages and Costs, twelve pounds: And after the execution sued, and money levied by the Sheriff (before the return of the Writ) the Plaintiff becomes a Bankrupt, and the said twelve pounds is assigned by the Commissioners to the creditors, and the money being brought into Court, the Plaintiff [now a Bankrupt] moves for it; and the Creditors to whom the same was assigned, likewise moved for it; and by Jones and Hyde, Justices, the assignment was good, because it was the Bankrupts Debt, and forfeitable

seizable by out-lawry : but *Whitlock* and *Crook* Justices *contra* ; because the Sheriff levying of the money before the party became a Bankrupt, it was in *Custodia legis*, and the Creditors cannot give a discharge, nor are they parties in Court, and if the Judgment should be reversed, not compellable to make restitution : and afterwards it was judged accordingly ; and that the money be delivered to the plaintiff, he acknowledging satisfaction : also it was said, that the Money was not the Plaintiffs until payed out of Court. *Crook*, *parce* 3. 166, 167. *Benson* *vers.* *Flower & Backnel*.

(69.) A. hath one in Execution for Debt, and then he becomes a Bankrupt, the Commissioners assign the Debt, if the party escape, whether may this Assignee have an action of escape : this is a Quere in *Mr. Stones Lecture*, fol. 9. And I conceive may be answered in the affirmative ; for by *Westminster* 2. chap. 11. Debt is given in such case against the Jaylor by the equity of that Statute, [for the words extend only to Accomptants.] And by 1 *Fac.* chap. 15. It is thus : That the Commissioners of Bankrupts, or the greater part of them, shall have

have power to grant and assign, or otherwise to order and dispose all or any of the Debt due, or to be due, to and for the benefit of the said Bankrupt, by what person or persons soever, or in what manner or form soever, to the use of the Creditors of the said Bankrupt, according to the true intent of the former Statute of Bankrupts: And that the same grant, assignment, or disposition of the said Debts, in form aforesaid, to be made by the said Commissioners, or any part of them, shall so vest the property, right, and interest of the said Debt and Debts, in the person or persons of him, her, or them, to whom it shall be granted, &c. by the said Commissioners, as fully to all intents and purposes, as if the said Bill, Bond, &c. Judgment, or Contract, whereon the said Debt, or Debts shall arise or grow, had been with the person or persons to whom the same shall be granted, &c. And that after such grant, assignment, or disposition: neither the Bankrupts, nor any other shall have power to receive, recover, or release it, &c. 1 Jac. 15. So that by the assignment, the Debt is vested to all intents and purposes in the Grantee, as if he had been the original Deb-

Debtor, might have had his action against the Sheriff, therefore the Grantee: and the Statute shall be liberally expounded for the relief of Creditors, especially, seeing in this case the Assignee or Grantee, is without any remedy for the Debt, if he cannot relieve himself against the Sheriff.

(70.) And Mr. *Stone* in his *Lecture* makes another *Quere*, whether he that comes in as Creditor, and hath a debt made over unto him by the Commissioners, &c. may not be barred notwithstanding by the Statute of limitations. And it may be answered that he shall be barred, for neither of the Statutes gives the Assignee any larger power, &c. than the original debtor had: also the Statute of limitation, was made for quieting of mens estates, and avoiding of Suites, which Statute, shall not be taken away without special words.

(71.) Such things as the Bankrupt himself disposed to the satisfaction of some of the Creditors, after that he became a Bankrupt, for the Statute of 13 Eliz. chap. 7. is, That the Commissioners must distribute to the Creditors share and share alike, &c. and that every such bargain, sale, &c. shall be good
Things disposed of by the Bankrupt.
I and

and effectual against the offenders and all persons, &c. And if the debtor after that he becomes a Bankrupt, may prefer one Creditor before another, it would be unreasonable, and a great defect in Law, that after he hath utterly discredited himself by becoming a Bankrupt, the Law should intrust him with the distribution of his Goods. Cook, lib. 2. 25. b. 26. a. Case of Bankrupts.

Now observe the means of discovery, and obtaining of the Bankrupts Estate.

**Break open
Houses,.**

(72.) It is enacted by 21 Jac. chap. 19. that the Commissioners, in execution of their Commission, or the greater part of them, or any other person or persons, officer, or officers by them or the greater part of them to be deputed, or appointed by their warrant or warrants under their hands and seals, may break open the house or houses, chambers, shops, ware-houses, doors, trunks, or chests of the Bankrupt, where the said Bankrupt, or any of his goods, or estate shall be, or reputed to be, and seize upon and order the Body, goods, chattels, ready money, and other estate of such Bankrupt, as by former Laws are limited and appointed, &c. 21 Jac. cap. 19.

73. Next

(73.) Next by examination and punishment of persons : 1. The Bankrupt himself, they may compel him to come before them : *vide* before *Stat. 39.*) They have power to examine him upon oath, upon such interrogatories touching his Lands, Tenements, goods, chattels, debts, bills, bonds, books of account, and such other things as may tend to disclose his or their estate, or the secret grants, conveyances, and eloyning of his, her, or their Lands, Tenements, goods, money and debts, as they shall think fit. 1 *Jac. chap. 15.*

(74.) Then observe the Bankrupts punishment in case of his refractoriness or deceit : first, for his not appearance before the Commissioners, *vide* before *Stat. 39.*) Secondly, in case he refuse to be examined, or answer not fully to every interrogatory to him to be admitted by the said Commissioners or the greater part of them, it shall be lawful for the said Commissioners, or the greater part of them, to commit the said offender or offenders to some streight or close imprisonment, there to remain, until he, she or they shall better conform him, or herself : 1 *Jac. chap. 15.*

Bankrupts
perjury.

(75.) Thirdly, for his perjury: If upon his, her, or their examination, it shall appear that he or she, or they have committed any wilful or corrupt perjury, tending to the hurt or damage of the Creditors of the said Bankrupt, to the value of 10 lib. of lawful money of England, or above; the party so offending shall or may be thereof indicted, in any of the Kings Majesties Courts of Record, and being lawfully convicted thereof, shall stand upon the Pillory in some publique place, by the space of two hours, and have one of his Ears, nailed to the Pillory and cut off: 1 Jac. cap. 15.

Mis fraud.

(76.) Fourthly, For the Bankrupts fraud: And if any Bankrupt shall upon his or her examination to be taken before the said Commissioners (executing the said Commission) be found fraudulently or deceitfully to have conveyed away his or her goods, chattels, lands, tenements, offices, &c. or other estate, or any part thereof to the value of 20 lib. or above; to the end and purpose to hinder the execution of this Statute, or of any other the aforesaid Statutes, or thereby to defraud, or delay, or hinder his or her Creditors of the same; and shall not upon his or her examination, discover unto the said Com-
mis-

missioners, and (if it lie in his or her power) deliver unto the said Commissioners, all that estate, goods, & chattels, so fraudulently and deceitfully conveyed away as aforesaid, or by him, or her; his or her means kept or detained from the said Commissioners: or that cannot make it appear unto the said Commissioners, that he or she hath sustained some casual loss; whereby he or she is disabled to pay what he, or she then owed; the offender shall or may be indicted for such fraud, or abuse at the Assizes, or general Sessions, to be holden, before the Judges of Assize, or Justices of Peace, of the County or place, where he, or she shall become Bankrupt: and if upon such Indictment, or Indictments, the Bankrupts be thereof convicted, he, or she so convicted, shall be set in the Pillory in some publick place, for the space of two hours, and have one of his, or her ears nayled to the Pillory, and cut off. 21 Jac. cap. 19.

(77.) Secondly, by examination of the Bankrupts wife: After such time as any person shall by the said Commissioners, executing the said Commission, or the greater part of them, be lawfully adjudged, or declared to be a Bankrupt, the said Commissioners, executing such

Wife of the Bankrupt.

Commission, shall have power and authority upon oath to examine the wife and wives of all and every such Bankrupts, for the finding out and discovery of the estate and estates, goods, and chattels of such Bankrupt or Bankrupts, concealed, kept, or disposed of by such wife or wives, in their own persons, or by their own act or means, or by any other person or persons: And that she, and they, the said wife and wives shall incur such danger and penalty, for not coming before the said Commissioners, or for refusing to be sworn, or examined; or for not disclosing of the truth, upon her, or their examination or examinations, as in and by the former Laws, or either of them, is already made and provided against any other person or persons in like cases: 21 Jac. chap. 19.

Other persons.

(78.) Thirdly, by examination of other persons. Any person known or suspected to have any of the Bankrupts estate, debts, &c. Wherein note, First, the power of the Commissioners to bring them before them; the Commissioners upon complaint made to them by any party grieved, knowing, supposing, or suspecting any of the goods, chattels, wares.

wares, Merchandizes, or debts of such offender or offenders, to be in custody, use, occupying, keeping, or possession of any person or persons ; or any person or persons to be indebted to any such offender or offenders, and do make relation thereof to the said Commissioners so to be appointed, or the more part of them , That then the said Commissioners, or the more part of them shall have full power and authority to send for, and call before them, by such procees, ways, and means, as they shall think convenient, all and every such person or persons , so known, or suspected to have any such goods, chattels, wares , &c. in his or their custody, use, occupation , keeping, or possession, or supposed , or suspected to be indebted to such offender or offenders : And secondly, to examine them : upon their appearance , the Commissioners may examine them , and every of them, as well by their oaths , as otherwise by such means as the said Commissioners, or the more part of them shall think fit, for and upon the specialty, certainty, and true declaration and knowledge of all and singular such goods, chattels, wares, merchandizes and debts, of any such offender or offenders , as be supposed, or

suspected to be owing to any such offender or offenders, 13 *El. chap. 7.*

Refusing to
come be-
fore the
Commission-
ers.

(79.) And in the next and third place, take notice of the punishment of such other persons; first, for their refusing to come before the Commissioners, or to be sworn and make answer. And by the Statute of 1 *Jac. chap. 15.* It is set forth, that no good means was appointed by 13 *Eliz.* either by imprisonment, or other penalty, to procure persons to be suspected to have any part of the money, goods, chattels, or debts of the said offenders, or to be indebted to them, to come before the Commissioners, or to be examined by them, &c. and then enacts, That if any person, or persons being known, supposed, or suspected, to have or detain any part of the lands, tenements, or hereditaments, goods, chattels, or debts of the said Bankrupt, or to be indebted to, or for the benefit of the said Bankrupt, shall after lawful warning to the said person or persons given, to come before the said Commissioners, or the greater part of them, to be examined, refuse to come, or shall not come before the said Commissioners at the time appointed, having no
lawful

lawful impediment (such as shall be allowed by the said Commissioners , or the greater part of them ;) or that any such person or persons , having knowledge or warning of any other assembly, or meeting of the said Commissioners shall not come and appear before them , at such time, as he or she may lawfully come, having no such lawful impediment, as shall be then made known to the said Commissioners, and by them admitted, & allowed as aforesaid. Or being come before them, shall refuse to be sworn , and to make answer to such interrogatories as shall be ministred to him or them , according to the true intent and meaning of the said Statute of 13 Eliz. or of this Act: That then it shall be lawful for the said Commissioners , or the greater part of them, to commit to such ward or prisons, as to them, or the greater part of them , shall be thought meet, all such person and persons, as so refuse to be sworn , and make answer to such Interrogatories , as shall be so administred as aforesaid : 1 Jac. 15.

Refusing to
be sworn,
and answer.

Their punishment.

(80.) And also to direct their warrants to such person or persons , as to them, or the greater part of them shall be

be thought meet, to apprehend and arrest such person and persons as shall refuse to appear before them as aforesaid, and to bring him, her, or them, before the said Commissioners, or the greater part of them, to be examined as aforesaid; and upon their refusal, to commit them to such Prisons as the Commissioners shall think meet, there to remain without Bail or Mainprise, untill their submission to the Commissioners to be examined, &c. 2 *Fac. cap. 15.*

(81.) But by 13 *Eliz. cap. 7.* in case any such person or persons, upon examination, do not discover the truth touching the said things whereof they are examined by the Commissioners as aforesaid, or do deny to swear, he is to forfeit double the value of the thing concealed, (*vid. apud, forfeiture,*) which doubtless is not taken away by 1 *Fac. cap. 15.* but the imprisonment is thereby added as a further penalty; and to force the parties suspected to have any of the Bankrupts Estate, to come before the Commissioners and make a discoverie: Also it may be observed, that the Statute of 13 *Eliz.* mentioneth only the concealing of the personal Estate, but 1 *Fac.*
cap.

cap. 15. Extends to Lands, Tenements,
 &c. as before, that are so with-held or
 conceal'd.

(82.) Thirdly, For their Perjurie : ^{Their Per-}
 If any person or persons, other than the ^{jurie.}
 Bankrupt, either by subornation, unlaw- ^{1 Jac. cap.}
 ful procurement, sinister perswasion or ^{15.}
 means of any others, or by his own act,
 consent or agreement ; shall wilfully and
 corruptly commit any manner of wilful
 Perjurie, by his deposition to be taken
 before the said Commissioners, or the
 greater part of them, as aforesaid ; That
 then the party or parties so offending ;
 and all and every person and persons,
 that shall unlawfully and corruptly pro-
 cure any such unlawful, wilful, and cor-
 rupt Perjurie, shall or may therefore be
 indicted in any of the Kings Majesties
 Courts of Record ; and after his or their
 conviction thereof, shall incur such for-
 feiture, and receive and suffer such pains
 and punishment as are limited by the
 Statute made concerning Perjurie, (*viz.*
5 El. cap. 9.) Now the punishment ap-
 pointed for Perjurie by that Statute is,
 That the person committing Perjurie
 shall forfeit 20 l. and indure half a years
 imprisonment without Bail or Mainprise,
 and

and his Oath never after to be received, &c. And if he hath no Goods or Lands of that value; then he is to be set in the Pillory, in some Market-Town, and to have both his ears nailed, and to be disabled to be a Witnesse in any Court of Record, *vid. 5 Eliz. cap. 9.* and by the same Stat. of 5 *Eliz.* the Procurers of Perjurie are to forfeit 40 *l.* and if they have no Estate of that value, then to suffer half a years imprisonment, without Bail or Mainprise, and to stand in the Pillory by the space of an hour, and in some Market-Town next adjoyning to the place where the offence was done, and never after to be admitted to be a Witnesse in any Court of Record.

Concealing
the Bank-
rupts Estate.

(83.) Fourthly, Concealing of the Bankrupts Estate: Any person being known or suspected to have any Goods, Chattels, &c, of the Bankrupts, or to be indebted to him, if he doth not upon examination disclose, and plainly declare his knowledge concerning the Premises, or doth deny to swear; Then every such person (upon due proof thereof before the Commissioners; by Witnesse, Examination, or otherwise, as they shall think fit) shall lose and forfeit double the

the value of such Goods, Chattels, Debts, &c. by them or any of them so concealed, 13 Eliz. cap. 7.

(84.) Fraud : If any person or persons do fraudulently, by covin or collusion claim, demand, recover, possesse or detain any Debts, Duties, Goods, Chattels, Lands or Tenements, by writing, trust, or otherwise, which were or shall be due, belonging or appertaining to any such offender or offenders, other than such as he or they can and do prove to be due by right and conscience for money paid, wares delivered, or other just consideration, or cause reasonable to the just value thereof, before the said Commissioners so to be appointed, or the more part of them, as is aforesaid ; and the same to proceed (*bona fide*) without fraud or covin ; That then every such person or persons so craftily demanding, having or detaining any such debt, duty, or other thing, as is aforesaid, shall forfeit and lose double as much as he or they shall so claim, demand, detain or possess, 13 Eliz. cap. 7.

85. The said Forfeitures of double the value in both the cases before mentioned, are to be levied and employed by

Fraud.

Forfeitures
how im-
ployed.

by

by the Commissioners, as followeth, viz. The said Commissioners, or the more part of them is to levie the same of the Lands, Tenements, Hereditaments, Goods and Chattels of the persons offending, by such waies and means, and in such manner and form as is before limited and appointed for the principal offender or offenders, debtor or debtors; and the same forfeiture or forfeitures to be distributed and imployed to and for the satisfaction and payment of the debts of the said Creditor or Creditors, in such manner, rate and form, as is by the Statute declared concerning the ordering of the Lands and Tenements, Offices, Fees, Goods and Chattels of such offender or offenders, debtor or debtors, 13 El. cap. 7.

Vid. Post.

Over-plus.

(86.) Over-plus: And if it shall fortune the Creditors of any such Bankrupt to be satisfied and payed off their debts and duties, of or with the proper Lands, Tenements, Goods, Chattels, & Debts of the said Bankrupts, or of or with the same and some part of the forfeitures of the said double values, to be forfeited as aforesaid; and that there shall remain an over-plus of the said for-

forfeitures of the double values; That then one moyetie thereof shall be by the said Commissioners, within convenient time after the levying thereof, paid unto the Queens Majestie, her Heirs and Successors; and the other Moyetie shall be by the said Commissioners imployed and distributed to and amongst the Poor, within the Hospitals, in every City, Town or Country, where any such Bankrupt shall happen to be, 13 *Eliz. cap. 7.* But the forfeitures by 1 *Fac. cap. 15.* [being for Perjurie and suborning of Perjurie] is by the said Act to be sued for, and recovered by the Creditors only, or any of them that will sue for the same, by action of Debt, Bill, Plaint, or Information in any of the Kings Courts of Record; and the sum and sums of money so recovered, (the charges of suit being deducted) shall be distributed, and divided towards the payment of the said Creditors of the said Bankrupt, 1 *Fac. cap. 15.*

(87.) The allowance to Witnesses: Allowance to Witnesses.
 Provided alwaies, That such Witnesses shall be sent for by the Commissioners, shall have such Costs and Charges as the Commissioners in their discretion shall

shall think fit: The same charges to be rateably born by the Creditors of the said Bankrupt, according to the proportion of each of their several Debts, 1 Jac. cap. 15.

The next thing to be considered, is the manner of the ordering and disposal of the Bankrupts Estate by the Commissioners.

In General. (88.) First, in General, The Commissioners may according to their discretion, order the estate of the Bankrupt for the Creditors satisfaction, 13 Eliz. cap. 7. Secondly, more Particularly; First, by views and appraisement; The Commissioners may cause the Bankrupts Lands, Tenements, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandises and Debts, to be searched, viewed, rented, and appraised, to the best value they may, 13 Eliz. cap. 7.

In Particular.

View, appraisement.

Sale. (89.) Secondly, by Sale: 1. To whom may they sell? The Statute of 13 Eliz. cap. 7. is, that the Commissioners may sell, without mentioning to whom; and by 21 Jac. 19. which giveth power to the Commissioners to sell entailed lands,

it is to any person or persons; which surely is intended to persons capable, and not to aliens, although they be Creditors.

(90.) Thirdly, Of what? Of all ^{of what.} Lands, Tenements, Hereditaments, and Deeds, Evidences and Writings touching the same; and of all Fees, Offices, Goods and Chattels of the offender, as is before set down.

(91.) Fourthly, In what Manner? ^{How.} As to the Lands, Tenements, Goods and Chattels in general of the Bankrupts; the sale is to be by Deed Indented and Intolled in any of his Majesties Courts of Record, or otherwise to be ordered by the Commissioners, for satisfaction of the Creditors, 13 *Eliz. cap. 7.* And therefore, although the sale be not by Deed intolled, according to the words of the Act, yet it is good enough, *Cooke, lib. 2. 25, 26. case of Bankrupts: A Rent Seck, whereof there is no seisin, shall be sold, and the sale is good without Attornement; Stones Lecture, 174. quere.*

(92.) As to lands intail'd of the Bankrupt <sup>Intail'd
Lands.</sup>

krupr, the Commissioners, or the greater number of them, are impowred by 21 *Jac. cap. 19.* by Deed Indented and Inrolled within six moneths after the making thereof, in some of his Majesties Courts of Record at *Westminster*, to grant, bargain, sell and convey any Mannors, Lands, Tenements or Hereditaments, whereof any Bankrupt is or shall be any waies seized of any Estate in Tail, in Possession, Reversion, or Remainder; and whereof no Reversion or Remainder is or shall be in the Kings Majestie, his Heirs or Successors of the gift or provision of his Majesty, his Progenitors, his Heirs or Successors, to any person or persons, for the relief and benefit of the Creditors, 21 *Jac. cap. 19.* *vide* before Sect. 53.

Copy-hold.

(93.) As to Copy-hold, or customary Lands, they are to be sold by Deed Indented and Inrolled in any of his Majesties Courts of Record, &c. as other the Lands and Estate of the Bankrupt are appointed to be by 13 *Eliz. cap. 7.* But by the same Statute it is provided, That all and every person or persons, to whom any such sale of Copy-hold, or customary Lands or Tenements shall be made shall

shall, before such time, as they or any of them, shall enter or take any profits of the same Lands or Tenements; agree, & compound with the Lords of the Manors of whom the same shall be holden, for such Fines or Incomes as heretofore hath been most usual and accustomed to be yielded or paid therefore: And upon every such agreement or composition, the said Lords for the time being, at the next Court to be holden at or for the said Manors; shall not only grant unto the said Vendee or Vendees upon request, the same Copy or Customary Lands or Tenements, by Copy of Court-Roll of the said Manors, for such Estate or Interest as to them shall be sold, and reserving the antient Rents, Customs and Services; but also, in the same Court, admit them Tenants of the same Copy or Customary Lands, as other Copyholders of the same Manors have been wont to be admitted, and to receive their fealty accordingly, 13 Eliz. cap. 7.

(94.) A Copy-holder surrenders, & before admittance, *cestuy que use*, becomes a Bankrupt; The Commissioners sell the Copy-hold, whether shall the Lord have 2 Fines, viz. one upon the

admittance of which should have been made to *cestuy que use*, if he had not become a Bankrupt; and another upon the admittance of the person that comes in by sale of the Commissioners of Bankrupts: and this is a *quere* in Mr. *Stones* Lecture, fol. 137. and it is there compared to a surrender made by the Heir before admittance, which is held to be good, but not to prejudice the Lord of his Fine due upon the Descent, *Cooke, lib. 4. 226.*

(95.) If the Vendee of a Copy-hold tender to the Lord a competent Fine, and the Lord refuse it; The Vendee may enter, *Stones* Lecture, 176. The Commissioners may Tell Copy-hold intail'd, which by custome may be intail'd and cut off: otherwise, if there be no such custome, *Stones* Lecture, 176. I conceive, if there be no such custome, then it is in nature of a Fee-simple conditional at the Common Law, and then if the condition be performed, *viz.* if the Copy-holder hath issue, &c. the Commissioners may sell it, as I suppose.

(96.) As to a Condition, Lands, Goods, &c. of the Bankrupt, made over

by him upon condition or power of Redemption, the Commissioners before the time of the performance of the condition, may appoint under their hands and seals, such as they shall think fit to perform the condition; and after such performance, shall dispose of such lands or goods for the Creditors advantage, as fully as of any other of the Bankrupts Estate, 21 Jac. cap. 19. vid. *devant*, Sect. (51.)

(97.) As to lands, &c. extended by a pretended Debtor or accomptant to the King, after that the party shall become a Bankrupt, 21 Jac. cap. 19. vid. Sect. 56. where it is set forth at large.

(98.) As to debts owing to the Bankrupt, vid. before Sect. 68. Suppose a Bankrupt be indebted to one 20 l. and to another 10 l. and hath a debt of 20 l. due to him by Bond; whether may the Commissioners assign the Bond to the two Creditors joyntly; and it was held by the Court, that it was to be divided and assigned according to the words of the Act, viz. to every Creditor a portion, part and part-like. Then another question was offered, whether the Assignees

signees might joyn in suit; and by *Warberton*, one of the Justices, part being assigned to one, and part to another, the Act of Parliament doth so operate upon it, that they shall sue severally: for he said, by the custome of *London*, part of a debt might be attached, *Godbolt's Reports*, 195. p. 282.

Distribution
of the Bankrupts
Estate.

(99.) Thirdly; Note, the distribution made by the Commissioners, of the Bankrupts Estate, wherein observe; first, to what Creditors in general: It is enacted by 21 *Jac. cap. 19*. That (the said Act, and all other Acts of Parliament formerly made against Bankrupts, should extend to strangers born, as well Aliens as Denizens, as effectually as to the natural born Subjects, both to make them subject to the Law, as Bankrupts, as also to make them capable of the benefit or contribution, as Creditors by those Laws: So, that satisfaction is to be made to all, as well Aliens as Denizens, &c.

(100.) Also, It is enacted by 21 *Jac. cap. 19*. That for the better distribution of the Lands, &c. Goods, Chattels, &c. of the Bankrupt, to and amongst his Creditors; That the Commissioners or the greatest part of them, shall and may

may examine upon Oath, or by any other waies or means, as to them shall seem meer, any person or persons for the finding out, and discovery of the truth and certainty of the several debts due and owing to all such Creditor or Creditors, as shall seek relief by such course of Commission to be sued forth, &c. 21 Jac. 19.

(101.) *A.* and *B.* are sureties for *I. S.* for the payment of money, and had Counter-Bonds from *I. S.* to save them harmless, the money was not payed at the day, the sureties pay it; *I. S.* after becomes a Bankrupt; Resolved, that *A.* and *B.* were Creditors, within the Statutes of Bankrupts: *Croke, part 2. 127. Osborne and Churchman's case; Mr. Stone* in his Lecture, fol. 18. makes a *Querie*; whether, one becoming a Creditor to the Bankrupt after that he had notice that he was a Bankrupt, might be a Creditor, relievable within the Statutes: To which it may be answered in the negative; for if the Law disables him to dispose of his Estate, (after he becomes a Bankrupt) directly, Then he cannot dispose of it by a mean, viz. by becoming a Debtor, and so to make his

his Lands and Goods liable to his Debt, if in the case before, such a Creditor were relieveable: and *Stone* seems to be of the same opinion, when he saith; A Bankrupt is committed to Prison, because he will not answer Interrogatories, the Gaoler gives him credit for victuals, he shall not be relieved, although he come in before distribution, fol. 183.

(102.) A Merchant is imprisoned, and after becomes a Debtor to *A.* and then the six moneths passe, *A.* is a Creditor relieveable; for he is not a Bankrupt by relation, *Stones* Lecture, 182. The Statute of 21 Jac. cap. 19. makes one a Bankrupt by relation from the time of his Arrest, only in two cases, viz. either when he makes an Escape, or comes out upon common Bail, which enumeration I suppose, excludes (relation) in other cases, in a penal Act of Parliament.

(103.) A Bankrupt is convicted for inmates, and the Statute gives an action of Debt in such case to the Lord of the Leet, &c. he is no Creditor, within the Statute of Bankrupts; *Stones* Lecture, fol. 21. for I conceive this is not properly

perly a Debt, but only a means given to recover a Forfeiture; and by *Stone*, a Mortgagee of Lands may chuse whether he will come in as a Creditor, fol. 181. There is before a special provision for satisfying of a condition by payment of the money, &c. by which it is intended, that the Mortgagee was never to be accounted as a Creditor.

(104.) It was decreed in *Star-Chamber*, that a Merchant for a wrong done by him to *I.S.* should pay him 20%. and the Merchant becomes a Bankrupt, *I.S.* is no Creditor, *Stones Lecture*, 184. for this is no Debt due for moneys borrowed, or upon any original contract; but only a payment laid on by the Court, and an action of Debt (as it is conceived) lies not for it; but only the party is to be punished by the Court, if he perform not the decree.

(105.) Secondly, more particularly; any Creditor coming in within four moneths after the Commission sued forth, by 1 *Jac. cap. 15*. The words are; And that it shall and may be lawful for any of the Creditors of the said Bankrupt, within four moneths after any such Commission

mission shall be sued forth, and until distribution shall be made by the said Commissioners for the payment of the Bankrupts debts, as in such case hath been used to partake and joyn with the other Creditors that shall sue forth any such Commission for satisfaction or payment of his, her, or their debts to him or them owing, without any let, hinderance or disturbance of any of the same Commissioners, or of any of the other Creditors of the said Bankrupts: the same Creditors so coming in, to contribute to the charges of the said Commission: and that if the Creditors come not in within four moneths, then the Commissioners to have power to distribute:
1 Fac. chap. 15.

(106.) In a Case of one *Ruggles* of *Suffolk*, upon view of the Statutes of *13 El.c. 7. & 1 Fac.c. 15.* of Bankrupts, it was resolved by the Court, that if certain Creditors sue a Commission, and others within four moneths after, or more, being Creditors, come before distribution, and will joyn in the charge of the Commission, and all that belongs to it, and tender their parts thereof: that they shall not be refused, but shall have their equal parts, as Creditors; but if
 any

any distribution be made of any part of the estate, no Creditors are to be admitted after, that come not in before : *Hobart, 287. Raggles Case.*

(107.) A Commission was sued out by some of the Creditors of the Bankrupt, and they pursued it; and the lands were sold, and after other Creditors prayed to be joyned with them: Resolved in this case, First, That the Commissioners may sell and prepare for distribution, presently upon the execution of the Commission, but until the four moneths past, they may not proceed to distribution. Secondly, That in this case the offer of the Creditors, to be joyned was not an effectual offer, without offering to be contributory to the charge, but to offer any particular sum is not necessary; and these words (*for the charge of the Commission*) are to be extended to all charges, arising in suing forth of the Commission, and in execution, and defence thereof. Thirdly, Resolved, That at any time before distribution, the Creditors may come and pray to be joyned, but after the four moneths past, and distribution made, they come too late; for so the distribution may be made void.

Hut-

Hutton, 37, 38. Raggles case, Hughes Abridgement, 316. Case 2.

Time of
distribution.

(108.) Next, observe the time of satisfaction, or distribution, it seems it must not be, until four moneths after the Commission sued forth; for so much time is given to other Creditors to come in and joyn in the Commission; and if the Creditors come not in within that time, the Commissioners may distribute, *1 Jac. chap. 15.*

Manner of
distribution.

(109.) The manner of the distribution: No respect is to be had to the nature of the security, for by *13 El. 7.* the Commissioners are to sell, or otherwise to order the Bankrupts estate, for true satisfaction and payment of the Creditors, rate and rate like, according to the Quantity of his or their debts, *23 El. chap. 7.* A debt due to the Bankrupt by Bond, cannot be assigned to two of his Creditors joyntly, but part to one and part to another, and by vertue of the Statutes, they may sue severally, *Godbolts Reports, 195.*

(110.) The Commissioners ought to make a several distribution to the Creditors, and not a joynt sale for the Act

faith

saith † it must be to every one, rate, and
 rate-like, but where a debt is joyntly
 due, there the Commissioners may satis-
 fie the same, by a joynt sale to them,
Cook, lib. 2. 26. b. Case of Bank-
rupts.

(III.) All and every Creditor, and
 and Creditors, having security for his or
 their several debts by Judgment, Sta-
 tute, Recognizance, specialty with pe-
 nalty, or without penalty, or other secu-
 rity, or having no security, or having
 made attachment in *London*, or any o-
 ther place, by vertue of any custom there
 used of the goods and chattels of any
 such Bankrupt, whereof there is no ex-
 ecution or extent served and executed,
 upon any the Lands, Tenements, Here-
 ditaments, Goods, chattels, and other
 estate of such Bankrupt, before such
 time, as he, or she, shall, or do become
 Bankrupt, shall not be relieved upon any
 such Judgment, Statute, Recognizance,
 Specialty, Attachments, or other secu-
 rity for any more than a rateable part,
 of their just and due debts, with the o-
 ther Creditors of the said Bankrupts,
 without respect to any such penalty or
 greater sum contained in any Judgment,
 Statute,

Statute, Recognizance, Specialty, &c. or other security, 21 Jac. chap. 19. I suppose security by Mortgage of Lands, cannot be within this Statute, for there is particular provision for the same, in the same Statute, 21 Jac. 19. nor are lands extended as it seems within the said clause, by reason of the words before, [*whereof there is no execution or extent served or executed.*]

The next thing considerable is, the effect of the distribution, made by the Commissioners, as aforesaid.

(112.) First in general, as to Lands, Tenements, Hereditaments, goods, chattels, and other estate of the Bankrupt: by 13 Eliz. chap. 7. It is enacted, That every direction, order, bargain, sale, and things done by the said persons so authorized [*viz. the Commissioners or greater number of them*] shall be good and effectual in the Law, to all intents, constructions and purposes, against the said offender or offenders, debtor or debtors, his or their wife or wives, heir and heirs, child and children, and such person and persons, as by joynt purchase with the said offender or offenders, shall have any estate,

estate, or interest in the premises ; and against all other person and persons, claiming by, from , or under such offender or offenders, debtor or debtors , by any Act or Acts, had, made , or done , after any such person shall become Bankrupt, as aforesaid ; and also against the Lords of the Mannors , &c. [*vide* after for Copy-holds,] 13 *Eliz. chap. 7.* But not to bar any purchaser upon valuable consideration, unless the Commission be sued forth within five years after the party becomes a Bankrupt ; by 21 *Jac. chap. 19.*

(113.) Secondly , As to Lands intailed of the Bankrupts : the Statute gives power to the Commissioners to grant , bargain, and sell by deed inrolled , Lands , &c. intailed of the Bankrupts, [*vide devant, Sect. 53.*] and then adds, that all and every such grants, bargains, sales , and conveyances shall be good and available in the Law, to such person or persons, and their heirs , against the said Bankrupts , and against all and every the issue of the bodies, of such Bankrupts, and against all, and every person and persons , claiming any estate, right , title, or interest, by, from,

Lands intayled.

from, or under the said Bankrupts, after such time, as such person shall become Bankrupt, and against all and every such person and persons whatsoever, whom the said Bankrupt, by common Recovery, or other way or means might cut off, or debar from any remainder, reversion, rent, profit, title, or possibility, into or out of any of the said Mannors, Lands, Tenements, or hereditaments: 21 Jac. chap. 19.

Copy-hold.

(114.) Thirdly, as to Copy-holds, the sale and disposition of them, shall be good against the Bankrupts, to all intents and purposes, and against his or their wife or wives, heir and heirs, in like manner, as before for his other estate, Sect. 45. for there is no distinct clause for the Copy-holds; viz. And also against the Lords of the Mannors, whereof the said Customary, or Copy-hold Lands been holden, their Heirs, Successors, and Assigns, and every of them: and there is a Proviso added, That the Vendees of such Copy-holds shall compound for their Fines with the Lords before entry: vide Sect. 93. before.

(115.) The sale of the Commissioners

ners doth vest the Copy-hold estate, so in the Vendee before admittance, that the said Bankrupt cannot be said to be Tenant; and therefore if he die before admittance, his wife shall not have any Customary estate, which by the custom she ought to have, when her husband dies Tenant; the Vendee is only excluded by the Statute from entry, or taking of the profits, before composition made with the Lord, which is only for the Lords benefit, and not the Copyholders; also it was held, that after composition for the time, and the admittance of the Vendee, it shall relate to divest all Customary estates happening since the sale, and before the said composition and admittance. *Crook, part 3. 568, 569. Parker vers. Edith Bleek.*

(116.) If two Joynt-tenants be of Copy-hold Lands in Fee, and the one out of Court according to the custom, surrender his part to the Lords hands, according to the custom, to the use of his last will, and by his will deviseth a part to a stranger in fee, and dieth; and at the next Court the surrender is presented; by the surrender and presentment the Joynture was severed, and the Devisee

L

ought

ought to be admitted to the moyety of the Lands, for now by relation, the state of the Land was bound by the surrender. *Cook, sur Litt. 596.*

Debts due
to the Bank-
rupt.

(117.) As to the debts due to the Bankrupt, The Commissioners have power to grant, assign, or otherwise to order and dispose all or any debts due, or to be due, to, or for the benefit of the Bankrupt, by any person or persons whatsoever, or in what form soever, to the use of the Bankrupts Creditors, according to 13 *Eliz. chap. 7.* And that the same grant, assignment, or disposition of the said debts, shall so vest the property, right, and interest of the said debt and debts in the person or persons to whom the same shall be so granted, assigned, &c. as fully to all intents and purposes, as if the Bonds, Bills, Statutes, Judgments, or contracts, whereupon such debt or debts did arise, or grow, had been made to or with the person or persons to whom the same shall be so assigned; And that after such grant, assignment, or disposition made of the said debts, neither the Bankrupt, nor any other to whom any such debt shall be due, shall have power to recover the same.

of same, nor to make any release or discharge thereof; neither shall the same be attached, as the debt of the Bankrupt, or such said other person or persons to whom the same shall be due, by any other person or persons, according to the custom of the City of London, or otherwise; But that the party or parties to whom the said debt shall be assigned, shall have like remedy to recover the same, as fully and lawfully in the name, or names of the person or persons to whom the same shall be so granted, assigned, or ordered by the said Commissioners, in all respects and purposes, as the party himself might have had: 1 Jac. chap. 15. *Provided always, that no debtor of the Bankrupt be hereby endangered for the payment of his or their Debt, truly and bona fide, to any such Bankrupt, before such time as he shall understand, or know that he is become a Bankrupt, 1 Jac. chap. 15.*

(118.) To give means of Recovery; As to the debts of the Bankrupt, assigned by the Commissioners; the assignee, shall have the like remedy to recover the same, as fully and lawfully, as the party himself. 1 Jac. chap. 15.

(119.) The Assignees of the said debts may sue for them in their own
 L 2 names,

names, because they are debts, transferred by Parliament; but yet notwithstanding, in case the action of debt arise upon a Contract, the defendant may wage his Law; for although the Parliament transferred the debt, yet it is no debt upon Record. *Croke, part 2. 105. Bradshaws Case.* A debt due by bond, assigned to two Creditors severally, they may sue severally for it: *Godbolts Reports, fol. 195.*

Lands extended.

(120.) As to Lands, &c. of the Bankrupt extended by any pretended debtor or accomptant to the King, after such time as the Bankrupt becomes a Bankrupt; such person or persons to whom the Commissioners, or major part, shall bargain, sell, grant or assign the said Lands, &c. shall have good remedy, to demand and recover the same, against such persons as detain the same. 21 Jac. chap. 19.

(121.) As to Lands, Tenements, &c. of the Bankrupts conveyed away upon condition the Commissioners have power to appoint one or more to perform the condition, *vide de vant, Sect. 51.*

Creditor barred.

(122.) Another effect of the Commissioners

missioners distribution, is to bar the Creditor : *if any Creditor of the Bankrupts, shall not be fully satisfied, or otherwise contented, by such means as the Statute appointeth, they may have their remedy against the Bankrupt, (as before they had) for the remainder, and shall be only barred for so much as they are satisfied, or contented for, and no more :
13 El. cap. 7.

(123.) Lastly, To restore the capacity of the Bankrupt : The Bankrupt to have the overplus of his estate if any be, after that the Creditors, are satisfied. And that the said Bankrupts after the full satisfaction of the said Creditors shall have power and authority to recover and receive the residue and remainder of the Debts to them owing. *1 Jac. chap. 15.*

Capacity of Bankrupt.

(124.) Next observe, the accompt of the Commissioners to the Bankrupt : such of the said Commissioners as shall put the said Commission in execution shall upon lawful request to them made by the Bankrupt, not only make a true declaration to the said Bankrupts of imploying and bestowing of their said Lands, Tenements, offices, Fees, goods, chattels, and debts so payed and satisfied to their

Recompt.

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said Creditors, but also make payment of the overplus of the same (if any such be) to the said Bankrupts, their executors, administrators, or assigns. 13 *Eliz. chap.*

7.

(125.) Remedy for the Commissioners in any action brought against them for acting by force of the said Statutes, they may plead not guilty, and justify by the authority of the said Acts, and the Plaintiff to reply *de son tort de mesme* : and if the Verdict pass for the defendant, he shall have Costs : 1 *Jac. cap.* 15.



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THE
RESOLUTIONS
OF THE
Judges,

Upon 13. *Eliz.* and
27 *Eliz.* the Sta-
tutes touching
Fraudulent Conveyances.

By Way Of
APPENDIX;

By The Same Author.

THE
RESOLUTIONS

OF THE

Judges

Upon the 17th and 18th

27th Elizabeth 2d

in touching

Translating Conveyances.

By Way Of

APPENDIX;

By The Same Author.



The Resolutions of the Judges, &c.

(1.) **T**HE Statute of 13 El. cap. 5. is made perpetual by 25 El. cap. 5. The words are; For the avoiding and abolishing of feigned Conveyances, ev-
 venous & fraudulent Assessments, Gifts, Grants, and Alienations, Conveyances, Bonds, Suits, Judgements and Execu-
 tions, as well of Lands and Tenements, as of Goods and Chattels; which have been and are contrived or devised of ma-
 lice, fraud, coven, collusion or guile, to the end to delay, hinder or defraud Creditors and others of their just and lawful Actions, Suits, Debts, Accompts, Damages, Penalties, Forfeitures, Heri-
 tions, Mortuaries, and Reliefs; not on-
 ly to the let or hindrance of the due course and execution of Law and Ju-
 stice; but also to the overthrow of all true and plain dealing between man and man, &c.

Fraudulent
Conveyan-
ces, 13 El.
Chap 5.

(2.) Be it therefore declared, ordained and enacted, that all and every Feoffment, Gift, Grant, Alienation, Bargain and Conveyance of Lands, Tenements, Hereditaments, Goods and Chattels, or any of them; or any Lease, Rent, Commons, or other profit or charge out of the same, or any of them, by writing or otherwise; and all and every Bond, Suit, Judgement and Execution, at any time had or made since the beginning of the said Queens Reign, or at any time hereafter to be had or made to or for any intent or purpose before declared and expressed; shall be from henceforth deemed and taken, [only against the persons their Heirs, Successors, Executors, Administrators and Assigns, whose Actions, Suits, Accompts, Damages, &c. by such Practises, may or shall be in any waies disturbed] to be clearly and utterly void: Any preterence, colour, feigned consideration, expression or use, other matter or thing to the contrary notwithstanding.

(3.) And be it further enacted, That all and every the parties, to such feigned, covenous, or fraudulent Feoffment, Gift, Grant, Alienation, Bargain, Conveyance, Bonds, Suits, &c. and other things

things before expressed; and being privie, and knowing of the same, or any of them, which at any time after the 10th. day of *June* next coming, shall wittingly and willingly put in ure, avow, maintain, justifie or defend the same, or any of them, as true, simple, and done, or made *bona fide*, and upon good consideration; or shall alien or assign any of the Lands, Tenements, Goods, Leases, or other things before mentioned, to him or them conveyed, as aforesaid, or any part thereof; shall incur the penalty and forfeiture of one years value of the said Lands, Tenements, Hereditaments, Leases, Rents, Commons, or other profits out of the same; and the whole value of the said Goods and Chattels, and so much money as shall be contained in any such covenous and feigned Bond: The one Moyetie thereof to be the Queens Majestie, the other to the party grieved, by such feigned and fraudulent Gift, Grant, &c. to be recovered in any of the Queens Courts of Record, by Debt, Bill, Plaint, or Information, wherein no essoyne, protection, or wager of Law shall be admitted for the Defendant or Defendants: And he also, being lawfully convicted, shall suffer im-

prisonment for half a year, without Bail or mainprise :

What the
Statute ex-
tends not to.

(4.) Proviso's; First, that the Statute shall not extend to common Recoveries, &c. Secondly, nor to any person or persons that shall use any voucher in *Formedon*. Thirdly, Nor to any Conveyances made upon good consideration, and *bona fide* to any person or persons, corporation, &c. without covin, &c.

Gift made
by a Papist.

(5.) Between *Panncefoot* and *Blunt* in the *Chequer Chamber*, the case was; *Panncefoot* being a Papist, was indicted for his Recusancie, and he made a gift of all his Leases and Goods upon colourable consideration, and fled beyond Sea, and was after outlawed upon the said Indictment; and some thought, that by the Common Law, the said gift was void, in regard it was in prejudice of the Queen; but all agreed that the said Statute of 13 *Eliz.* extends to it; for it extends not only to Creditors, but to all such as have any cause of action or suit, or any penalty or forfeiture: And it was also resolved, that this word, Forfeiture, shall be intended, not only of a forfeiture upon an Obligation, Recognizance, &c. but

but to every thing lawfully forfeited to the King, or a Subject: And therefore, ^{Felon.} if a man to prevent a forfeiture by felony, or outlawry, makes a gift of all his Goods, and after is attainted or outlawed, these Goods are forfeited, notwithstanding the Gift, *Cook, lib. 3. 82.*

(6.) It was held, that the Statute of ^{Per Heir of Debtor.} 13 *Eliz. cap. 5.* extends to a fraudulent conveyance made by the Heir of the Debtor, of lands descended to him from his deceased Ancestor, as well as by the Debtor himself; for in such case the Heir is Debtor, and the Writ against him is in the *debet* and *detinet*, whereas against an Executor it is in the *detinet* only, *Croke, part 1. 350. p. 1.*

(7.) It was found by a special Verdict; That a Testator was seized of divers Goods, to the value of 250*l.* and by covin to defraud his Creditors, he made a gift of the said Goods to his Daughters, with a condition, that upon payment of 20*s.* it should be void, and dyed; this was held to be a fraudulent gift, by 13 *Eliz. cap. 5.* and that notwithstanding it, the Goods continued ^{Gift upon Condition} *Assets, Croke, part 1. 810. p. 16. Berhel and Edm. Stanhope.*

Gift by Ex-
ecutrix, who
continues
possession.

(8.) An Executrix makes a fraudulent gift of the goods of the Testator, & inter-marrieth; and her husband taketh upon him payment of Debts, &c. The Goods being still in their possession, were held to be still *Assets*, *Croke*, part 1. 406. p. 16. *Wilcotts*, vers. *Watson*.

Considera-
tion.

(9.) A man maketh a Lease for 80 years of Lands, without any consideration; and he after setteth a Joynture upon his Wife of the same Lands; she could not avoid that Lease, because the Conveyance to her was likewise voluntary, and without any valuable consideration, *Croke*, part 1. 445. p. 8. *Hpton* and *Bassett*.

Gift pend-
ing a writ.

(10.) *Pierce* was in debt to *Twine* 400 l. and to C. 200 l. C. brought Debt against *Pierce*, and pending the Writ, *Pierce* being possess'd of goods to the value of 300 l. in secret makes a general gift of all his Goods and Chattels, real and personal whatsoever, to *7 min*, in satisfaction of his debt; and yet notwithstanding *Pierce* continueth in possession, and some of them he sold, and he marked the sheep with his own mark. And af-

ter

ter C. had a Judgement against *Pierce*, and a *Fieri Facias* to the Sheriff, who coming to make execution by force of the Writ, divers persons by *Twins* command resisted the Sheriff, claiming the goods as *Twines* by force of the said gift: and this was resolved to be a fraudulent gift; and that in the said case there were these several marks of fraud: First, the gift is general, without any exception, so much as of wearing apparel: Secondly, the Donor continueth in possession: Thirdly, It was secret: Fourthly, it was made pending the writ: Fifthly, here was a Trust between the parties, for the donor still useth the goods as his own: Sixthly, the words of the Deed are, that it was made honestly, truly, and *bona fide*, & *clausula inconsueta inducunt suspicionem*, Cooke, lib. 3. 81. *Twines* case.

Marks of
Fraud.

(11.) Secondly, it was resolved in the same case, that although here were a Debt due to *Twine*, and a good consideration of a gift, yet it was not aided by the same Proviso in 13 *Eliz.* which was, that the said Act should not extend to any Estate or Estates made upon good consideration, and *bona fide*; for this is not *bona fide*, because it is upon a Trust, and

Consideration
bona
fide.

and no gift shall be construed, to be bona fide, within the said Statute, that is made upon a Trust, *Cooke, lib. 3. 81. Twines case.*

Advice
touching
Gifts.

(12.) And it is my Lord *Cooke's* advice in the said case, that when any gift is to be made in satisfaction of a debt: First, that it be publickly done before Neighbours; Secondly, that the goods, &c. given, be appraised by honest men: Thirdly, that the Donee presently after the gift, take possession; for the continuance of possession in the Donor, is a mark of Trust, *Cooke, lib. 3. 81. Twines case.*

(13.) One held divers lands of divers Lords by *Herriott* custome; and to defraud one of the Lords of his *Herriot*, he made a fraudulent gift of all his beasts *Herriottable, viz. of 20 Horses*: The Lord, who was hereby grieved, bringeth Debt upon 13 *Eliz. tam pro Domina Regina quam pro seipso*, demanding the value of the 20 Horses; and by *Dyer* and *Harper*, it was well said, by intendment of the Statute; for it may be, he shall never come to seize his *Herriott*, and if he shall recover but the value, the Queen shall have the one Moyetie: But *Man-*

wood

wood held *contra*; for the other Lords are as recompensable for their *Herriotts*, as the Plaintiff: and *Harper* held, that all the Lords might joyn in an action; but *quere*, saith *Dier*, 351. p. 23.

(14.) Upon communication of marriage between Sir R. G. and the Lady S. Proviso, to determine, &c. the said Sir R. G. promised, before the affiancement, to assure unto her 1000 *l. per an.* for her Joynture, (his Estate being then 12000 *l. per an.*) and thereupon she married him, without any assurance or covenant in that behalf: After, he conveyed by Deed lands of great value to some friends of the Ladies [then his Wife] to the use of the said Lady for term of 100 years, if she so long lived, to commence after his death, and it was indorsed on the back of the Deed, that the intent was, that when there should be a Joynture of 1000 *l. per an.* settled on her, according to the first agreement, the Lease should be void: and it was held, that this was no fraudulent Lease, notwithstanding the Proviso, to determine it at the Husbands will; for the Court took diversity between the case above, and when a Lease is made with a Proviso, That if the Lessor pay 10 *s. &c.* the Lease

Lease to be void, because in the later case, the smalnesse of the sum payable, makes it apparent to be only a power of revocation; and such a Lease a purchaser shall avoid; And the Court held, that the Lease aforesaid being made in pursuance of the first promise, although no mention of a Lease was therein made, yet it was grounded upon a good consideration, and not fraudulent: And although it was objected, that the Lady had concealed the Lease, during her Husbands life, and therefore it should be fraudulent, &c. yet, it was answered thereunto by the Chief Justice; That actions ought to have their resort to the first original, and the Lease being good at the first, the concealment cannot make it ill, *Croke*, part 2. 455. p. 23. *Dame Griffin*, vers. *Stanhope*.

Evidence.

(15.) *Scire Facias* [upon a Judgement in Debt, against *T. H.* who died] against the *Terre Tenants*, they pleaded a Feoffment made by *T. H.* long before the Judgement, *absq; hoc*, that he was seized at the time of the Judgement, or after: and issue being thereupon taken, the Jury found the Feoffment, and that it was made by covin to defraud the Plaintiff and

and other Creditors ; and judged for the Plaintiff ; for *T. H.* remained still seized as to the Creditors, notwithstanding the Feoffment : But if issue had been directly taken, enfeoffed, or not enfeoffed, it had been found against the Plaintiff ; for in such case, he must avoid the Feoffment, by covin, specially pleaded : but here the Issue being seized or not seized by the Feoffment, the covin may be given in evidence, *Hobert*, fol. 72. *Humberton* vers. *Hongill*.

(16.) Debt brought by *Hawes* vers. *Fraudulent Leader* as Administrator of *Tho. Cookson* ^{Gifts of Goods} : the Case was, that *Tho. Cookson* for 20 *l.* did grant unto the Plaintiff all his Goods mentioned in a Schedule, annexed to the Deed, and gave possession by a Pewter-dish, with a covenant, safely to keep them, and to deliver them unto the Plaintiff upon demand, and bound himself in 40 *l.* to perform the Covenant ; *Tho. Cookson* dies, and the Plaintiff demands of the Defendant (being the Administrator of *Cookson*) the goods, who refused to deliver them, and hereupon the Plaintiff brought his action ; the Defendant pleaded the Statute of 13 *Eliz. cap. 5.* and that *Cookson* was indebted to divers

divers in sums amounting to 100 l. [naming in particular, the persons and the sums] and being so indebted, makes the said gift, being then of those and other goods possess'd, to the value of 80 l. and no more; and that the Deed was made by fraud between them, to deceive his Creditors, and the Plaintiff demurred. First, because the Defendant avers not that the debts were unpaid. Secondly, because he doth not shew that the debts were due by Specialty, for an Administrator is not lyable to other debts: Thirdly, the Defendant supposeth, that the delivery of the goods would be a *devastavit* in him which cannot be; for the goods in the Plaintiffs hands, are lyable to Creditors, as *Executor de son sort demiesne*, if the Deed be fraudulent. Fourthly, It may be the Creditors will never sue, and then the Defendant might detain the goods for ever, which is inconvenient: Fifthly, the Defendant is not a person enabled by 23 Eliz. to plead that Plea; for the Statute makes the Deed void only against Creditors, but not against the party himself, his Executors, or Administrators, judged for the Plaintiff, *Croke*, part 2, 270. p. 3 *Hanes vers. Leasler*.

(17.) This fraud need not be pleaded: In debt brought against the heir upon an obligation made by his father, the defendant pleaded nothing by descent; and it was found that before the suit begun, the defendant had made a Feoffment in Fee of all his Lands, to defraud the Plaintiff of his action, but this fraud was not pleaded: Resolved by the Court, it need not be pleaded specially, but only given in evidence: First, because 13 E/12. provides generally, that the estate as to the Creditors shall be void; and Acts of Parliament made to suppress frauds shall be favourably interpreted. Secondly, fraud, and covin are so privily hatched, that the party grieved hath no means to find them out, and then to force the Plaintiff, who is a stranger to plead it, would be against reason, *Cook, lib. 5. 60. Gooches Case.*

Frauds need not be pleaded, but given in evidence.

(18.) The Court shall not intend fraud, where it is not found by the Jury: *Fraud not intendible by the Court.*
A. seized of Lands in Fee, holden of *Z.* of his Mannor of *H.* by Fealty, Rent, and rendering the best beast, after the death of every Tenant in Fee-simple, *A.* by Deed in consideration of love to his Son and heir apparent, and a marriage

age between his Son and B. and for the Sons advancement, infeoffes his said Son of the said Land : the Son afterward to the end B. should not be endowed during his fathers life, re-demiseth the Land to his father for 40 years , if he lived so long : The marriage took effect, the Son did his suite, and after the Feoffment, the father paid the Lords Rent ; the father dies, the Lord taketh his best Beast for an Herriot ; and in Trespass brought, the Jury found all the special matter , also the Statute of 13 *Eliz.* But it was resolved, That in regard no fraud was found by the Jury , the Court should not intend the said Feoffment to be fraudulently made ; and the same being found to be made in consideration of marriage, shall not by construction of Law be taken to extend to any other intent , nor to be fraudulent, *Coak, lib. 10. 56.*

Consideration. (19.) There are two manner of gifts upon good consideration : First, upon consideration of Nature and Blood. Secondly, a valuable consideration : and the Statute of 13 *Eliz. cap. 5.* and the *Proviso* therein extends only to a valuable consideration ; for a gift made to defeat others , must be made upon as high and good

good consideration, as the things to be defeated are : also every gift made upon trust, is out of the said *Proviso*, because it is not *bona fide* : and a trust is either expressed, or implied ; expressed, when it is set down in, or upon the gift ; implied, when the gift is made without any consideration, or upon consideration of Nature and blood, *Cook, lib. 3. 81. b. Twines Case.*

~~Statute of 27 Eliz. Deceit of purchasers.~~

27 Eliz. Chap. 4. Concerning Fraudulent Conveyances.

1. **B**Y the Statute of 27 Eliz. cap.

Stat. of
27 Eliz. De-
ceit of pur-
chasers.

4. It is ordained and enacted, That all and every Conveyance, Grant, charge, lease, estate, incumbrance, and limitation of use or uses, of, in or out of any lands, tenements, or other hereditaments whatsoever, had or made at any time heretofore, since the beginning of the Queens Reign, or hereafter to be made, for intent or purpose to defraud and deceive such person and persons, Bodies Politike, or Corporate, as have purchased, or shall hereafter purchase, in Fee-simple, Fee-tail, for life, lives, or years, the same Lands, Tenements, or Hereditaments, or any part thereof, so formerly conveyed, leased, &c. or to defraud and deceive such as have, or shall purchase any Rent, Profit, or Commodity, in or out of the same, or any part thereof, shall be deemed and taken, only as against that per-

person and persons , bodies Politique and Corporate, his and their heirs, successors, executors, administrators, and assigns, and against all and every other person and persons lawfully having or claiming, by, from, or under them, or any of them , which have purchased, or hereafter shall so purchase for money or other good consideration, the same Lands, Tenements, or hereditaments, or any part thereof, or any rent, profit, or commodity, in, or out of the same, to be utterly void, frustrate, and of none effect.

(2.) And be it further Enacted, That all and every the parties, to such feigned, covenous, and fraudulent gifts, grants, leases, &c. before expressed, or being privy to, or knowing of the same, or any of them, which after the 20th of April next coming, shall wittingly, or willingly put in ure, justifie, or defend the same, or any of them, as true, simple, and done, or made *bona fide*, or upon good consideration, to the disturbance, or hinderance of the said Purchasers, &c. shall incur the penalty, and forfeiture of one years value, of the said Lands, Tenements, and hereditaments, so purchased, or charged; the one moiety to the Queen, the other,

Penalty?

the party grieved, to be recovered in any of the Queens Courts of Record, by debt, bill, plaint, or information, where no essoyne, protection, or wager of Law, shall be admitted to the defendant, or defendants, and to suffer imprisonment for one half year without Bail or Mainprise: 27 Eliz. chap. 4.

(3.) Provided, that this Act shall not extend to any grant, &c. made upon good consideration, and *bona fide*, nor to any mortgage made *bona fide*, without fraud, and upon good consideration: 27 El. chap. 4.

Conveyance
with clause
of Revoca-
tion,

(4.) And it is further enacted, that if any person or persons, have since the Queens Reign that now is, or shall hereafter make any conveyance, gift, grant, demise, charge or limitation of use or uses, of, in, or out of any lands, tenements, or hereditaments, with any clause or condition of Revocation, determination, or alteration, at his or their will and pleasure of such conveyance, &c. of, in, or out of the said lands, tenements, or hereditaments, or any part or parcel thereof; and after such conveyance, gift, &c. so had, or made, shall bargain, sell, demise, grant,

grant, convey, or charge the same Lands, Tenements, or Hereditaments; or any part thereof, to any person or persons, bodies politique or corporate, for money, or other good consideration payed or given; [the said first conveyance, &c. not being by him revoked, made void, or altered, according to the power reserved;] That then the said former conveyance, assurance, &c. as touching the said Lands, Tenements, and Hereditaments, so after bargained, &c. against the said Bargainees, Lessees, and Grantees, and every of them, their heirs, successors, executors, administrators and assigns shall be void, &c. 27. *El.* cap. 4.

(5.) J. C. had a lease for 60 years (if he lived so long) and he forged a ^{Lease forged.} Lease for ninety years absolutely; and by Indenture reciting the forged Lease, he bargained and sold the same, and all his interest in the Land to R. G. R. G. is no purchaser for valuable consideration, within the said Statute of 27 *Eliz.* because he contracted not for the true and lawful interest; and although by the words, his true interest passed: yet he gave no valuable consideration for it: *Cook upon Littl. fol. 3. b.*

The Act
binds the
King.

(6.) One who intended to sell his Lands, had by fraud conveyed the same by Deed inrolled to the Queen : In this case the purchaser shall enjoy the Land against the Queen, by the Statute of 27 *Eliz.* for that Act being general and made in suppression of fraud, shall bind the Queen : *Cook, lib. 11. 74. a. Magdalen Colledge Case.*

Future power
of Revoca-
tion.

(7.-) A man conveyed his Lands to the use of himself for life, and after to the use of divers others of his blood, with a future power of Revocation, *viz.* after such a Feast, or after the death of such an one, &c. and before the power of Revocation commenceth, he, for valuable consideration doth bargain and sell the same lands to another, and his heirs : this bargain and sale is within the remedy of 27 *Eliz. cap. 4.* for although the Statute saith, [*the first conveyance not by him revoked*] which seems by the literal sence to be intended of a present power of Revocation, for no revocation can be made by force of a future power, before it comes in *esse*; yet it was held that the intent of the Act was, that such voluntary Conveyance that was originally subject to a power of Revocation, be it in present

sent or in future, shall not stand against a purchaser, who cometh in upon good and valuable consideration, and *bona fide*,
Cook, lib. 3. 82. Twines Case.

(8.) Resolved, That if a man hath power of Revocation, and after to the intent to defraud a purchaser, he levy a Fine, or make a Feoffment, or other conveyance to a stranger, whereby he extinguisheth this power; and after he bargain and sell the lands to another for valuable consideration, the Bargainee shall enjoy the Land; for as to him, the Fine, Feoffment, or other conveyance, by which the condition was extinct, was void by the said Act of 27 Eliz. And it was said, that the said Act made voluntary Conveyances, with power of Revocation, in an equal degree as to purchasers, with conveyances made to defraud purchasers: *Cook, lib. 3. 82. b. Twines Case.*

(9.) If a man make a Lease for years by covin and fraud, and after make another Lease *bona fide* without Fine paid, or rent reserved; the second lease shall not avoid the first: for first, it was agreed, that by the Common Law, an

Estate made by fraud shall be only void against him that had a former right, and not against him that had a puisne right or interest. Secondly no purchaser shall avoid a precedent conveyance made by fraud or covin, but he that is a purchaser for money, or other valuable consideration: and the words [*good consideration*] in the Act, ought to be understood of valuable consideration only, and not a consideration of nature or blood, &c. *Cook. lib. 3. 83. Twines Case.*

(10.) A man of little capacity, and not able to govern the lands descended to him, and being disposed to riot and disorder, by mediation of friends, openly conveyed his lands to them, upon trust and confidence, that he should take the profits for his maintenance; and that he should not have power to waste and consume them: and after being seduced by persons, he sold his Lands to them for a small sum of money: And this bargain and sale, although it was for money, was held to be out of 27 *Eliz.* which Act was made against fraud and deceit, and shall not aid any purchaser that cometh not to the land for good consideration, lawfully and without fraud or deceit, but
such

such a conveyance made upon trust, were void as to him that purchaseth it for valuable consideration, and *bona fide*, Cook, lib. 3. 83. b. *Twines Case*.

(11.) If a man seized of Lands in Fee make a fraudulent Conveyance, to the end to deceive and defraud a purchaser, against the Statute of 27 *Eliz.* and continueth in possession, and is reputed as owner, and *B.* enter into communication with *A.* for the purchase of it, and by accident *B.* hath notice of this fraudulent conveyance, and yet notwithstanding he concludes with *A.* and taketh an assurance from him; yet *B.* shall avoid this fraudulent conveyance, by the said Act of 27 *Eliz.* notwithstanding his notice; for the Act by express words makes the fraudulent conveyance void, as to a Purchaser, for the notice of a Purchaser, cannot make that good, which by Act of Parliament is void, as to it: Cook, lib. 5. 60.

Notice of
the fraud.

(12.) One, after Marriage, voluntarily assigns a Lease for years, as it were in joynture for his wife, and took the profits, and after sold it to one who had no notice of this conveyance: this was held to be within 27 *Eliz.* although at the

Voluntary
Convey-
ance.

the first it was not made upon trust, to be revoked, &c. because it was a voluntary conveyance at the first, and shall be intended fraudulent at the beginning: But if at the time of the Marriage, or after, by reason of a portion given by his wives friends, in recompence thereof, and for a Provision for maintenance of his wife, he had made an assignment of such a Lease to his wives friends, and had after taken the profits thereof, as in reason he ought during his life, and had then sold that Term, yet it had not been within the said Statute. *Crook, part 2. 158. Colvil vers. Parker.*

(13.) A man Covenants for natural love, &c. to stand seized to the use of himself for life, the remainder to his Son in Tail, with a power of Revocation, and a *Proviso* to make Leases for 21 years; and after makes a Lease for 21 years, for 30 *lib.* Fine paid. Resolved, That notwithstanding this voluntary and revokable conveyance, yet the Lease for years was absolutely good, by 27. *Eliz.* and as to the Lessee, the conveyance shall be construed, as if it had been revoked, and that the Lessor was then Tenant in Fee; and it was also resolved, That in case of

a Lease for years, made as before, there had been a Rent only reserved, it had been a good consideration, and within the Statute; and the making of such Lease was a revocation of the first Estate according to the Lease, *Croke*, part 2. 181. p. 19. Also it was resolved, that the said Lease for years; respect being had only to the Proviso, and power thereby given, was void; for it being only a covenant, and the consideration not extending to the Lease for years, no use is raised to him thereby, *ibidem*.

(14.) Grandfather, Father, and Son, the Grandfather, upon the Fathers marriage, makes the Wife of the Father a Joynture; and at the same time, covenants to demise other Tenements to the Father for 1000 years, and after maketh such demise accordingly, to commence after his death; in which was a Proviso to make the same void, upon the Fathers dying without issue, or making a Lease not reserving the antient Rent; the Father after assigns the said Lease to the use of his Son (an infant) to the intent, that it should not drown by the descent of the reversion, and with the colourable

ble purpose and intent, that the infant should pay debts, &c. The Grandfather dies, the Father enters into the Lands, and taketh the Profits, and makes Leases, and doth other Acts as Owner; and neither the Assignees nor Infant took any Profits, or paid any Debts; and the Assignment was made to divers persons of good reputation, but the assignment it self was delivered into the hands of a person of mean quality; The Father after bargains and sells the said Lands for a great sum of money by Deed inrolled: By all which marks, the said Lease and Assignment were taken to be fraudulent, *Cooke, lib. 6. 72. a. Burrells case.*

(15.) Resolved, (in the said Case) That whereas the words of the said Act of 27 Eliz. are, That all and every Conveyance, Grant, &c. for the intent to defraud or deceive such persons as have purchased, or shall purchase the same Lands, &c. shall be deemed, only against such Purchaser, void: yet if the Father make a Lease by fraud and covin of his Lands, to defraud others, to whom he shall demise or sell it, [as all fraudulent demises shall be intended,]
old and

and before the Father sells or demiseth it, he dieth; and the Son, knowing or not knowing the said Lease, sell the Lands upon good consideration; In this case the Vendee shall avoid the said Lease by the said Act of 27 *Eliz.* for the words of the Act are general, and it is not needful that he who sold the Land, should make the former Estate or incumbrance; But if the Estate be fraudulent, whosoever is the seller, the Purchaser shall avoid such fraudulent Estate: Also, it was resolved, That although the Father had nothing of Inheritance in the Land, at the time of the assignment of the Lease, but the inheritance was in the Grandfather, yet when the Grandfather dieth, and the Father sells the Land, his Vendee shall avoid the said Term; for if he had bargained, and sold the Term only, the bargain should have avoided the fraudulent assignment, and by consequence, the Vendee of the whole Fee-simple shall avoid it, *Cooke, lib. 6. 72. a. b. Burrells case.*

(16.) In Trespass: The Plaintiff and Defendant claim by several Leases from the same man: The Plaintiff in his
Decla-

Declaration avers the defendants Lease to be made by fraud, but sheweth not any consideration payed by himself: whereupon the Defendant Demurs: *Telverton*, at Common Law there was not any fraud remedied, to defeat an after purchase, but that only which was committed to defeat a former interest, which was granted; and 27 *El.* doth not aid it, for here is no consideration payed for the second Lease, no more than for the first: *Laker contra.* A thing obtained by a mans own act, makes a man a purchaser within the said Statute, and the fraud is confessed by the Demurrer; *Anderson*: the confession of the fraud is not material, in regard the Plaintiff is not such a person, as ought to have benefit thereby, and within the remedie and provision of the Act; and by that Act a fraudulent conveyance is not made void against all, but only against such as come in upon valuable consideration: *Wamsley*, according; and he said, that a fraudulent gift of goods, remains good against the donor, but not against his Creditor, by 13 *Eliz. Crook*, part 1. 445. p. 8. *Horton vers. Basset.*

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F I N I S.

